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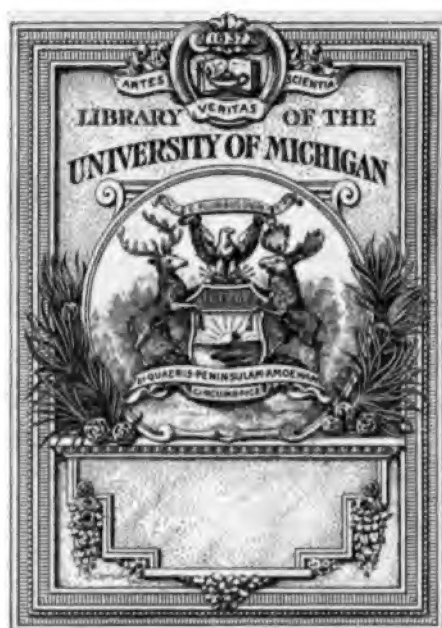
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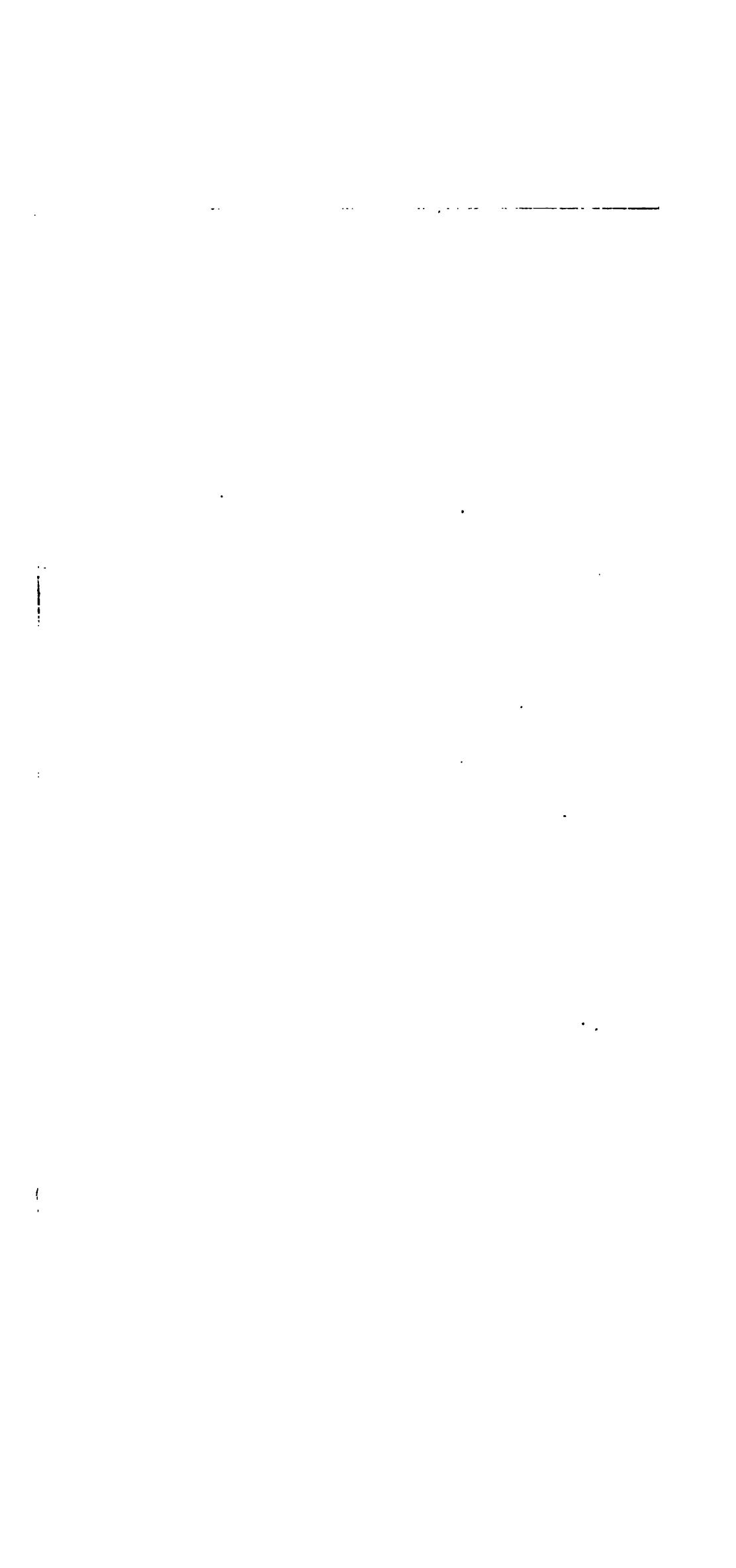
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INTERSTATE COMMERCE COMMISSION

REPORTS.

SPENCER E. CARR

v.

NORTHERN PACIFIC RAILWAY COMPANY.

Decided April 3, 1901.

Complainant, a commercial salesman, travels with his assistant over the defendant transcontinental line in a private car stocked with samples of men's clothing and furnishings. For the first trip the car was transported from point to point as complainant required for fifteen round-trip fares between St. Paul, Minn., and Portland, Ore.; but defendant's charge for subsequent trips was fifteen local fares from point to point where stoppages were made by complainant for business purposes. Complainant alleged this higher charge to be unreasonable and also wrongfully discriminating as compared with the lower rate of fifteen round-trip fares usually granted to pleasure, theatrical and other parties in private cars. While there is no substantial difference in cost to the carrier in transporting complainant's car and cars used by theatrical or other parties, the dissimilarity in the nature and value of the two services is marked and the benefit accruing to complainant exceptional. He uses in all cases the property of defendant, its side tracks and station yards, for transacting his business, and his occupation is such that he derives advantages peculiar to himself which are not available to other owners of private cars. Defendant claimed not to be a common carrier of private cars, and that it may transport some cars and refuse to transport others as and when it sees fit. *Held—*

1. The regulating statute is opposed to every species of favoritism, and seeks to secure like treatment for all persons in like relations to the carrier. Defendant may lawfully decline to haul private cars at all, or it may haul private cars of one class and refuse to haul others of a wholly different class; but if it transports private cars of any class, it must in like manner and upon like terms transport all private cars occupied for the same or similar purposes.

2. Where the differences in cost or character of service are sub-

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stantial, either in the work performed by the carrier or in its utility and value to the person served, a fair relation of rates meets the carrier's obligation.

3. In comparison with the private-car service more or less frequently performed by defendant for pleasure seekers and theatrical companies, the service demanded by complainant is dissimilar and unusual to such a degree that to require from him greater compensation, or to refuse his car altogether, would not subject him to unlawful discrimination or disadvantage.

4. In determining whether it will in any case transport complainant's car or others of that class, defendant may properly take into account the effect of the practice upon the interests and localities it serves; but the right of complainant to have his car hauled does not depend upon the wishes of his business rivals, nor can the compensation to be paid by him be justly conditioned upon the routing of his freight traffic.

5. Rates may be fair and reasonable for the service rendered, and, from the carrier's standpoint, justly related to other charges; and yet if a low rate is granted upon conditions with which only a few can comply (*e. g.*, a charge below the ordinary carload rate for shipments of a hundred or a thousand carloads), that rate is presumably unfair and wrongfully prejudicial to all other shippers of like traffic, because they are practically unable to meet the terms upon which it is offered. This principle may properly be considered with reference to the class of cars employed by complainant, which only a limited number of dealers can afford to use for reaching their customers and exhibiting their wares. In the competitive struggle to supply consuming markets neither contestant should be favored through the facilities furnished or the rates enforced by public carriers. This is at once the aim of the law and the requirement of relative justice.

6. The rates charged to complainant for moving his car, while not held to be reasonable, are not shown to be unreasonable.

7. It is the legal duty of defendant to publish and file its rates and regulations for the movement of private cars, certain kinds of which are more or less frequently handled over its line.

Messrs. Stringer & Seymour for complainant.

Mr. C. W. Bunn for defendant.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, Chairman.

A somewhat novel charge of discrimination is made in this case, as will appear from the following statement of facts:

The complainant is a commercial salesman representing a
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number of wholesale dealers in Chicago, St. Louis and Milwaukee, for whom he sells a general line of men's clothing, including hats, shoes, underwear, hosiery and other articles. In conducting his business he has occasion to visit twice a year the principal towns in North Dakota, Montana, Idaho, Washington and Oregon, and his trade in those States is quite extensive. He is paid by commissions and defrays his own expenses. The lines of defendant traverse the States named, and it is a common carrier subject to the Act to Regulate Commerce.

In May, 1898, the complainant applied by letter to defendant's General Passenger Agent, Mr. Charles S. Fee, for the rates upon which a private car would be transported for him from St. Paul, Minn., to Portland, Ore., and return, with stops at such intermediate places as he might desire. The reply received was to the effect that his car would be so moved upon payment for fifteen round-trip tickets at \$90 each, or a total of \$1,350. To what extent, if at all, the intended use of the car was disclosed at the time does not appear, but the actual use of it by complainant, as hereinafter explained, evidently became known to defendant's officers before the first trip was completed. This trip commenced at St. Paul on November 13, 1898, and occupied between four and five months.

Prior to the last-named date the complainant had purchased a second-hand Pullman parlor car at a cost of about \$3,000. He removed the old chair seats therefrom and fitted up the interior with tables, drawers and other conveniences so as to make what he quite aptly describes as a "traveling sample room." The car was also furnished with desks, safe, typewriter and other facilities for transacting his business. The various samples carried by him were placed in the receptacles thus provided, and he began his journey, accompanied by an assistant, on the day above mentioned. They had sleeping accommodations in the car, and took their meals at hotels along the route. The weight of the samples was about 2,000 pounds; their value about \$1,500, and their bulk probably sufficient to fill fifteen trunks. The safe was stated to weigh 600 pounds.

On a subsequent trip of like character the weight of this car and its contents, including complainant and two assistants, was 9 I. C. C. REP.

found to be 89,100 pounds, and this was approximately the weight needed whenever the car in question was moved for complainant. This is somewhat, and perhaps considerably, less than the weight of an average Pullman car of modern type. As the defendant's rules allow 150 pounds of free baggage on each full ticket, it will be seen that the weight of complainant's samples was not equal to the aggregate weight of free baggage which defendant might have been required to carry on the fifteen tickets purchased by complainant.

As above stated, the first trip of this car over defendant's lines was begun in November, 1898, and ended early in the following April. This trip was made under the arrangement already mentioned. The complainant paid the stipulated sum of \$1,250 in installments as agreed upon and his car was moved from place to place according to his directions. It was attached in nearly every case to regular passenger trains; in a few instances it seems to have been moved for short distances by freight trains; but this occurred in the night and apparently without the previous knowledge or consent of complainant. It is to be inferred from the testimony that defendant carried out its agreement in good faith and fully performed for this trip the service which complainant was entitled to receive. Stops were made at such places as he desired, customers came to the car, the samples were shown and sales effected. When the business in one town was concluded the car was taken along to the next stopping place by the first train passing in that direction. This continued until the entire journey was completed.

No goods were delivered from this car to customers, either on the first or any subsequent trip. The stock carried by complainant consisted wholly of samples and these were used solely for the purpose of facilitating sales. The orders obtained were sent to the different dealers and filled by them, the goods being shipped by freight to the several purchasers.

This first trip with a traveling sample room seems to have been quite successful and the complainant naturally desired to continue a method of business which proved so advantageous.

Accordingly, in the early part of May, 1899, he again applied to have his car moved from St. Paul to Portland and return, and

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apparently supposed at the time that his request would be granted upon the same terms as before. These terms, however, were refused, although he tendered the amount previously paid, and he was informed that his car would not be moved except upon payment of fifteen local fares from station to station as stoppages were made. As he testifies, the reason assigned by defendant's Third Vice President, Mr. Hannaford, with whom complainant had an interview, was in substance that the St. Paul jobbers had asked him not to allow this car to be run over his road; that he had told them he could not exclude the car, but that he would raise the rate to a figure which complainant could not afford to pay. Some further objection appears to have been made by Mr. Hannaford, based on the weight of the car, the nature and value of the property carried therein and other matters of similar import.

Whatever motive may have influenced the course taken by defendant, the result was that complainant could secure the desired transportation only upon the terms above stated. He was required to pay the equivalent of fifteen local fares for each separate movement of his car. This he did under protest, taking receipts from the agents for the several payments made. The second trip commenced at St. Paul May 8, 1899, and ended October 2 of that year. As we understand, the services rendered at this time were substantially the same in all respects as those connected with the first trip. The cost to complainant, however, was about \$1,100 greater, that sum being approximately the difference between round-trip rates from St. Paul to Portland and return and the aggregate of local fares for the same journey, on the basis of fifteen tickets in each case.

In October, 1899, a third application was made by complainant for the private-car rates granted him the year before, and he met with another refusal. Several letters passed between the parties during the latter half of that month, but we do not find in this correspondence any additional fact which seems to us material. The denial of complainant's request was unequivocal, and terms were named to him, in the last letter from Mr. Hannaford, as follows: "You will pay us fifteen local fares from station to station, and you will cease working against our com-
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pany on your shipments, and you will give me a written acknowledgment of your acceptance of these terms." Reference is here made to the virtually admitted diversion from the Northern Pacific to other lines—because private-car rates were refused complainant in the previous May—of the goods shipped to fill the orders obtained by him on his second trip. He claimed to have the routing of over \$600,000 worth of merchandise every year, and the freight charges upon property of that value must have amounted to a considerable sum. Whether such written acceptance was actually given is not disclosed, but it inferentially appears that complainant made a third trip with this car which commenced at St. Paul about the 12th of November following. His fourth trip was in progress, on the basis of local rates, when he testified in this case at Spokane, Wash., June 25, 1900.

The evidence shows that complainant's car was hauled at reduced rates over other lines than those of the defendant company. For instance, he states that it was moved for a year and a half, though how many times does not appear, between Portland and Spokane, on the line of the Oregon Railway & Navigation Company, upon payment for fifteen tickets at two thirds the regular one-way rate, which is the same as ten local tickets from station to station. Later he was refused this rate, and required to pay fifteen local fares for each movement of his car. When he applied for the former rate of ten fares, he was told that a letter had been received from Mr. Hannaford asking the officials of that company to charge complainant fifteen local fares from station to station, and they would have to make that charge as they were unwilling to do anything contrary to Mr. Hannaford's wishes. It further appears that he made three trips with this car on the Great Northern Railway from Seattle, Wash., to Whitcom, Wash., and return, at a rate of \$81 for the round trip. These places are on Puget Sound, about 120 miles apart, and fifteen local tickets both ways, between the points where he stopped, would have cost an aggregate of \$124.80. His car was also hauled on the Great Northern from Helena, Mont., to Great Falls, Mont., and return, for \$106.50, whereas fifteen local tickets from station to station would have cost \$120.

The Southern Pacific likewise moved this car from Portland, Ore., to Ashland, Ore., and return, at a charge of \$300 for the round trip, as against \$410.40 for fifteen local fares for the same service. There was also a single trip in one direction between Chicago and Portland over the Oregon Railway & Navigation Company, Oregon Short Line, Union Pacific, and Chicago & Northwestern; and this trip, as we understand, was on the basis of private-car rates. Some minor trips at reduced rates were perhaps taken, though the evidence on this point is very indefinite.

In addition to the foregoing it seems that complainant applied for rates on his car to Mr. F. I. Whitney, General Passenger & Ticket Agent of the Great Northern Railway Company, for a letter from Mr. Whitney was introduced, dated June 8, 1900, in which he says: "When Mr. Carr called at my office it was explained to him that it was the rule of the transcontinental lines to transport a special car for fifteen or more fares, and that we would transport his car on that basis; but that the only available fares which would allow him the stopovers desired, for the length of time that he would consume on his trip, were the nine months' round-trip excursion tickets to the Pacific Coast, and that if he bought fifteen of these tickets we could not refuse to handle his car in accordance with the custom of the transcontinental lines and the stopover privileges carried by the tickets. These are public rates that we would quote to anybody." This letter is also inserted in these findings because of the statements therein made as to the rule or custom of the transcontinental lines in regard to the hauling of special and private cars.

The above are substantially all the instances, so far as the proofs in this case disclose, in which complainant obtained or applied for the transportation of his car. Except the one-way trip between Chicago and Portland, *via* the Union Pacific and its connections, the only transcontinental movement was over the Northern Pacific. The trips on other roads appear to have been incidental to the main journeys from St. Paul to Portland and return, and those journeys were made over defendant's lines.

The further fact may be here stated that complainant has introduced I. C. C. REP.

roduced a method of selling goods not before employed. His venture is admittedly the first of its kind. According to his own testimony it is the only instance known in which a private car has been equipped as a traveling sample room, and used in the business of a commercial salesman. The enterprise is rather unique and certainly possesses the merit of novelty.

At the time complainant first applied for private-car rates, as above stated, the defendant company had on sale, as appears from tariffs filed with the Commission, a first-class round-trip excursion ticket, not transferable, between St. Paul and Portland, for the sum of \$90. This ticket was subject to a final limit of nine months from date of purchase. It was also limited to sixty days for the going journey, but was good to return at any time within the final limit. To the extent permitted by those limits the holder was allowed to stop over at any point in either direction. The same rate upon the same conditions still remains in force. This is the basis, as we understand, on which complainant's first trip was made. The amount paid by him was equal to the price of fifteen such tickets, and the restrictions upon their use as to time and stopover privileges applied to the movement of his car.

We find no Northern Pacific tariff on file which names rates for parties using private cars or the conditions upon which such cars will be hauled. Nor, so far as appears, have any tariffs been issued by defendant, in recent years at least, which provide special rates for tourists, theatrical troupes or other persons traveling in company. The rate sheets contain no statement in this regard, and complainant makes no claim to the contrary. The same may be said of the tariffs of the Great Northern road.

What the actual practice of defendant has been, with reference to this class of passengers, is not fully or definitely shown. Much was assumed or left to be inferred. The answer herein makes certain statements bearing on this point, among which are the following: "Its (the defendant's) passenger trains are frequently heavily loaded and contain so many cars in regular and necessary public service that it is impossible to attach extra or private cars to the same. At other times it is possible to

transport extra or private cars, and at such times, to be determined by itself, this defendant is ready and willing to add to its passenger trains extra or private cars for such compensation as under all the circumstances may be agreed upon between it and the owners thereof. * * * This defendant is customarily willing, when the size of its passenger trains admits, to transport a private car for a hunting or theatrical party at the rate of fifteen round-trip tickets." These statements seem to be relied upon as an admission of the discriminating facts alleged in the complaint. There is also the letter of Mr. Whitney, quoted from above, which speaks in one place of the "rule," and in another place of the "custom," of the transcontinental lines to transport a special car on fifteen fares, though it is difficult to see on what theory this letter is competent evidence against the defendant. It is altogether probable that private and special cars occupied by pleasure seekers, hunting and fishing parties, theatrical companies and the like, have been usually if not invariably transported by defendant on the basis of fifteen round-trip tickets, and allowed to stop over at places indicated *en route* or agreed upon in advance. If the fact were otherwise it could have been easily shown, but no such evidence was furnished. The complainant was the only witness examined and his testimony adds little to the statements contained in the answer beyond the recital of his own experience. To what extent such cars were hauled, and whether upon uniform or varying terms, rests mainly in inference and conjecture. Of course no car like complainant's has been transported at any time, as his is conceded to be the only one of its kind.

The tariffs of most roads, or the rules of associations to which they belong, make special provision for private cars, and name the conditions under which they will be moved. While provisions in this regard differ in minor particulars, they appear to be generally based on a charge of fifteen fares by the western lines, and of eighteen fares by the eastern lines. A similar statement is found in the Rules and Regulations of the Western Passenger Association, which, however, does not include the Northern Pacific in its membership.

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CONCLUSIONS.

The view we take of this case permits us to consider a state of facts somewhat more favorable to complainant than his proofs warrant. It seems proper to do so in order that the general question involved may be decided, even if it is not fully presented by the record in this proceeding. If it be conceded that the defendant in all cases, and in accordance with its established practice, transports the private cars of pleasure parties, hunting parties and other persons traveling together, at round-trip or special rates lower than local fares from station to station, allowing such cars to stop over at places along the route as may be desired by their occupants or arranged for with them, is the defendant bound to transport complainant's car on the same terms?

This question, in our judgment, must be answered in the negative. Not for the reason that the higher local charges which complainant is compelled to pay are justified by greater cost to the carrier, for the service rendered to him is not materially more expensive, as we believe, than that performed for others. Neither the weight of his car nor the risks and trouble incurred in its transportation, if those were the only matters to be taken into account, would entitle defendant to exact greater compensation from him than it accepts for hauling the private and special cars of other owners. True, it is not unlikely that the movement of complainant's car, in the manner desired by him, is rather more inconvenient and burdensome than the usual movement of private cars. His stops are frequent and their duration more or less uncertain. It is perhaps impracticable to so map out his journey that defendant can know in advance, long enough to suitably prepare therefor, when and where his car is to be taken up, or on what day a side track must be cleared for it at the next stopping place. Some difficulties of this sort undoubtedly arise, and it may be that the handling of this car, as compared with other private cars, is less desirable from the operating standpoint. But these objections do not impress us as very important and cannot be regarded as controlling. There is certainly no such greater cost of transporting the car in question as at all corresponds with the difference between

round-trip rates and the aggregate of local charges. On the contrary, we are confident that this car could be and would be moved for the most part, if not altogether, at approximately the same expense as other private cars.

The real distinction is found, as we conceive, in the nature and value of the service secured by complainant. This service is not merely unusual, in the sense that it is enjoyed by him alone, but it is essentially unlike that received by ordinary travelers in private cars. The purpose for which complainant employs his car differs materially from the purpose of tourists, sightseers and professional actors. Their transfer from place to place accomplishes only in part, sometimes is little more than incidental to, the object of their journey; the complainant obtains substantially all the results for which he travels through the facilities of the carrier. Not only does he save at every stopping point the cartage between depot and hotel of something like a ton of samples, and the cost of rooms required for their display, to say nothing of the labor of packing and unpacking a large quantity of wearing apparel, but he uses in all cases the property of defendant, its side tracks and station yards, for the transaction of his business. His car is moved like other private cars, though probably oftener and with somewhat less convenience; and in addition he is provided at the carrier's expense, and for such length of time as he chooses to stay in each town, with the necessary ground room or lot on which to locate his establishment and where it can be visited by customers. The dissimilarity in this respect is marked, the benefit accruing to complainant exceptional. His occupation is such that he derives advantages peculiar to himself which are not available to other owners of private cars. In various ways the service he enjoys is distinguishable from the service obtained by pleasure seekers and theatrical companies. For this reason the refusal to allow him the lower rates accorded to them is not, as we think, an unjust discrimination within the meaning of the act.

In fixing rates for differing but analogous services the carrier has the right to exercise an honest discretion. Trifling differences of cost or character do not justify disparity of charges; but where the differences are substantial, either in the work to

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be performed or, as in this case, in its utility and value to the person served, a fair relation of rates meets the carrier's obligation. Moreover, there must be some limit to the private-car service which a given carrier can lawfully render or be required to furnish. If the contention of complainant is upheld, a rule of conduct is thereby enforced, at least to the extent of our authority, which may impose undue burdens upon the carrier, or be so applied as to cover grave abuses. The circumstance that no goods are delivered from this car can hardly be decisive. On what theory shall the rates demanded by complainant be confined to those who sell by sample? May not another dealer transport a stock of merchandise on the same terms, paying on any overweight as for excess baggage, and make immediate delivery of the wares sold? Why not a whole department store, moved from town to town as desired by its proprietor, and operated at each place on the premises of the carrier? In short, what business can be excluded if the one in question, because conducted with a private car, is entitled to the private-car rates of actors and pleasure parties?

We do not indorse the proposition that defendant, because it publishes no rates for private cars, and claims not to be a common carrier of such cars, can transport some private cars and refuse to transport others of *the same kind* as and when it sees fit. That is not the view entertained. The regulating statute is opposed to every species of favoritism, and seeks to secure like treatment for all persons in like relations to the carrier. The defendant may decline to haul private cars at all, no matter by whom owned or for what purpose used, and a uniform rule to that effect would be entirely consistent with its public obligations. The defendant may also, as we think, haul private cars of a certain class, and refuse at the same time to haul others of a wholly or substantially different class. In either case, however, there should be no avoidable partiality. It is not a question of convenience, much less is it a question for arbitrary decision. A well-defined and reasonable policy should be adopted, and that policy should be observed to the fullest practicable extent. If the defendant usually or upon occasion transports the private cars of sportsmen and theatrical troupes, whether upon pub-

lished rates or otherwise, it must in like manner and upon like terms transport all private cars occupied for the same or similar purposes. So, too, if complainant's car is hauled, whether upon the basis of round-trip or local fares, the same service and terms must be accorded to all dealers whose private cars are converted into stores or sample rooms, and used on the carrier's premises for commercial transactions. Between those engaged in like callings, or having like objects in view, no distinction can be lawfully made. They are entitled to the same privileges and the same scale of charges. But it does not follow, because tourists and actors are carried in cars furnished by them, that defendant is bound to transport at the same rates, or at any rates, a private car equipped for the display of samples, or stocked with goods for sale, and employed by its owner as the advertised place of conducting his business. The difference in the nature and value of the service is so material, in our judgment, as to warrant the exaction of higher charges for hauling a car like complainant's, or to justify the carrier in declining to haul it at all. In comparison with the private-car service which defendant more or less frequently performs for hunting parties, showmen and the like, the service demanded by complainant is dissimilar and unusual to such a degree that to require from him greater compensation, or to refuse his car altogether, would not, we are convinced, subject him in a legal sense to undue prejudice or disadvantage. In our opinion the defendant has the right to exclude all such cars from its road, if it chooses to do so; or, with the qualification hereinafter indicated, it may undertake to handle all that are offered, on such uniform terms as shall be just and reasonable, though higher, it may be, than the rates accepted for ordinary private cars.

The protest said to have been made by St. Paul jobbers did not of itself excuse the increased rates imposed upon complainant after his first trip. In determining whether it will in any case transport private cars of the class in question, the defendant may properly take into account the effect of the practice upon the various interests and localities which it serves; but it may not discriminate against this particular car because its use is objected to by complainant's rivals in business. Nor did the

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diversion of his shipments to competing roads justify higher charges than would otherwise have been accorded. The right of complainant to have his car hauled does not depend upon the wishes of dealers in St. Paul or elsewhere, nor can the compensation to be paid by him be justly conditioned upon the routing of his traffic.

There is another aspect of the question which lends support to our conclusions. It seems plain to us that the use of private cars, especially for business purposes, is not favored in law and ought not to be encouraged by the Commission. The reason for this is found in the discriminating results which are liable to attend the substitution of private for public equipment. It is not always enough that open rates are made and strictly observed, even if fair and reasonable for the service rendered; nor is it sufficient in every case that a relation of rates, just from the carrier's standpoint, is maintained as between shipments of the same article by different methods or in different quantities. For example, a carload rate lower than the less than carload rate, where the difference is not too great, would ordinarily be lawful; but a still lower rate for shipments of a hundred or a thousand carloads, though duly published and impartially applied, would be wholly indefensible. If a low rate is granted on conditions with which only a few can comply, that rate is presumably unfair and may be extremely prejudicial to all other shippers of like traffic, because they are practically unable to meet the terms upon which it is offered.

Something of this sort may be said with reference to private cars of the class to which complainant's car belongs. If his method of selling goods is more profitable than the methods usually employed by salesmen, he obtains an actual advantage over them in the matter of transportation. If that advantage is material, as appears to be the case, it may enable him to undersell his competitors or force upon them the adoption of similar agencies. But only a limited number of dealers can afford to use private cars for reaching their customers and exhibiting their wares. The great majority would be debarred from that course by want of means or insufficient volume of trade to warrant the expenditure. Therefore, if the defendant and carriers

generally should undertake to transport all cars of the kind in question, even upon terms fairly compensatory for performing the service, the probable effect would be an undue preference to the owners of such cars, because the privileges enjoyed by them, though nominally open to all, would not in fact be available to their business rivals. Such a policy, in other words, would inure to the benefit of large capitalists and combinations, and operate to the corresponding injury of smaller concerns. This phase of the matter should not be overlooked, for much more is involved than the interests of the parties to this proceeding. In the competitive struggle to supply consuming markets, neither contestant should be favored through the facilities furnished or the rates enforced by public carriers. This is at once the aim of the law and the requirement of relative justice.

Aside from the foregoing grounds of complaint, it is charged that the local rates exacted from complainant, subsequent to the first movement of his car, are in themselves excessive, and for that reason violate the first section of the act. No direct proof supports this allegation, and whatever facts of record bear upon the issue are too meager for its determination. The evidence on this point is confined to a comparison of rates, and that of itself is not sufficient to condemn the higher charges. *McGrew v. Missouri Pacific Ry. Co.* 8 I. C. C. Rep. 630. The difference between round-trip and the aggregate of local fares is considerable, perhaps somewhat unusual, but the distance is great and the conditions affecting through and local travel substantially unlike. We do not decide that these local rates are reasonable, either as applied to complainant or the public generally; we merely hold that they are not shown to be unreasonable.

The defendant is remiss, in our opinion, in failing to publish regulations for the movement of private cars, certain kinds of which, as it concedes, are more or less frequently handled. A service often performed—not in any instance, so far as appears, actually refused—should be open to the public and made known by proper announcement. The admitted facts before us indicate a violation of law in this particular, which ought not to

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be continued. We think the defendant should exclude from its road all cars of the class in question, or else prescribe in its tariffs the rates and rules under which they will be transported.

This neglect to make tariff provision for private cars is not relied upon for relief in this case, nor does our ruling in regard thereto aid in any way the complainant's contention. As respects the grievances alleged by him the complaint should be dismissed.

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HILTON LUMBER CO.
v.
WILMINGTON & WELDON RAILROAD COMPANY
et al.

Decided April 10, 1901.

1. The rule that while the aggregate rate should increase the rate per ton per mile should decrease as distance increases is not one required by the statute and is subject to qualifications and exceptions.
2. The local rates on lumber from Wilmington to Norfolk or Portsmouth, Va., added to the rates in force from Portsmouth or Norfolk to Philadelphia, Jersey City and Boston, produce lower aggregate charges than the through rates in effect on lumber carried by the connecting defendant carriers from Wilmington direct to Philadelphia, Jersey City and Boston via Portsmouth and Pinner's Point, adjacent to Norfolk. This results from the fact that the arbitrary or proportion of the through rate from Wilmington exacted by the carriers north of Portsmouth or Norfolk is greater than their rates on shipments from Norfolk or Portsmouth. The rates to Philadelphia, Jersey City and Boston from Norfolk or Portsmouth are made to meet water competition, and such competition also exists for traffic from Wilmington to Northern seaport cities. Lumber manufacturers in Wilmington and Norfolk and vicinity compete actively for the sale and shipment of lumber to northern markets. The circumstances and conditions applying on the transportation of lumber from Portsmouth, Norfolk and vicinity to Philadelphia, Jersey City and Boston on traffic originating at those points and at Wilmington are substantially similar, or if any difference exists it is in favor of the through Wilmington business. *Held*—That the through rates from Wilmington to Philadelphia, Jersey City and Boston, to the extent that they exceed the sum of rates from Wilmington to Norfolk or Portsmouth and from the latter points to the northern cities mentioned, are unjust and wrongfully prejudicial to Wilmington shippers in violation of sections three, one and two of the Act to regulate commerce.

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3. Divisions of joint rates are usually less than the corresponding locals, and almost without exception not greater, and while a case may arise in which such a division could with propriety be made greater than the local or straight rate, no such case is presented here where the total through rate on competitive traffic exceeds the sum of charges to and from an intermediate point.
4. Case retained for further investigation in regard to certain apparent discriminations resulting from a lower proportion or arbitrary charged by carriers south of Norfolk on lumber from Wilmington to New York City than on lumber from Wilmington to Jersey City, located on the Hudson River opposite New York, and from lower rates charged by one of such carriers from interior points near Wilmington to Portsmouth or Pinners Point on shipments to northern seaport cities than the proportion or arbitrary charged by it on through business from Wilmington to the same destinations.

Claudian B. Northrop for complainant.

Ed. Baxter and *Junius Davis* for Seaboard Air Line, Atlantic Coast Line and Richmond, Fredericksburg & Potomac R. R. Co.

James A. Logan and *Geo. V. Massey* for Pennsylvania R. R. Co., Philadelphia, W. & B. R. R. Co. and B. & P. R. R. Co.

Wm. E. Barnett for N. Y., N. H. & H. R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, Commissioner:

In this case the complaint alleges that defendants' rates on lumber in carloads from Wilmington, N. C., to Philadelphia, Jersey City and Boston are unreasonable in themselves and relatively unreasonable and wrongfully discriminating as compared with the rates from Norfolk to Philadelphia, Jersey City and Boston, in violation of the Act to regulate commerce. The answers filed by the defendants deny generally that their lumber rates from Wilmington to the cities mentioned are in violation of the statute.

1. The complainant is a corporation engaged at Wilmington, N. C., in the manufacture and shipment of pine lumber. The timber is cut from its own forests in the interior of North Carolina and brought by rail or down the Cape Fear River to its mills at Wilmington. The product of Wilmington lumber mills

is nearly all shipped north. It is estimated that about one-half goes by water from Wilmington, the other half going by rail. The undressed lumber is shipped largely from Wilmington by water, while the great bulk of dressed lumber is carried from Wilmington by rail. The lumber chiefly manufactured by complainant is what is known as "short-leaf" or North Carolina pine. It is a sap growth and has little strength or durability when exposed to the weather. This lumber is kiln-dried and manufactured into flooring, moulding, window and door casings, and other material used in interior work, for which it is especially adapted.

Wilmington is served by one regular steamship line to New York or Jersey City, and, as the requirements of trade demand, by vessels of various descriptions to Philadelphia, New York, Jersey City, Boston and other northern and eastern ports. The complainant ships some of its dressed pine lumber by water, but prefers to send it by the rail lines in box cars, on account of greater liability to disfigurement or other damage from the more frequent handling and exposure incident to carriage and delivery by vessel. A further and perhaps more important reason why the complainant prefers the all rail routes is that when a vessel is chartered a stock sufficient to fill the vessel must have been previously manufactured and stored, while shipments by rail merely involve the manufacture of lumber sufficient to fill cars as ordered from the carrier, which can be done at complainant's plant from day to day. The manufacture of large stocks in advance of shipment, providing storage for such stocks, and resulting delays in the execution of orders, involved in shipments by vessel, are avoided when the traffic goes by rail. These conditions must be taken to apply with equal force at Norfolk and points on waterways in that vicinity.

Complainant's product competes for sale in northern and eastern markets with the product of other mills in North Carolina and mills at or in the vicinity of Norfolk. The manufacturers in and around Norfolk are among complainant's strongest competitors.

2. Shipments from Norfolk, like those from Wilmington, may be carried all rail or wholly by water to Philadelphia, New
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York, Jersey City or Boston. A much larger business is done at the port of Norfolk than at Wilmington. Considerable quantities of lumber go north by sail and steam vessels. The Old Dominion Steamship Company carries lumber from Norfolk to New York. Some of this lumber traffic from Norfolk is carried to Philadelphia, and at times to New York and Jersey City, in barges.

3. Since the institution of this proceeding the defendants, the Wilmington & Weldon Railroad Company, the Norfolk & Carolina Railroad Company, the Richmond & Petersburg Railroad Company and the Petersburg Railroad Company, have been consolidated with others into one operating company under the name of the Atlantic Coast Line Railroad Company. This new company has also taken the place of what was before known as the Atlantic Coast Line Association. The defendant roads specified in the title of this case as parts of the Seaboard Air Line System have also, since the complaint herein was filed, been consolidated with other companies under the name of the Seaboard Air Line Railway Company. The defendant, the New York, Philadelphia & Norfolk Railroad Company, is controlled by the defendant, the Pennsylvania Railroad Company. This last-named company also controls the road of the defendant, the Baltimore & Potomac Railroad Company. The road of the defendant, the Richmond, Fredericksburg & Potomac Railroad Company, is operated under close traffic arrangements with the Pennsylvania Railroad System.

Lumber traffic from Wilmington to northern and eastern cities is carried by either the Atlantic Coast Line or the Seaboard Air Line to Richmond, thence north by the Richmond, Fredericksburg & Potomac Railroad to Quantico, Va., where it is handed over to the Pennsylvania System which delivers the freight at Philadelphia, Jersey City or New York. When the traffic is destined to Boston delivery is made in that city by the defendant, the New York, New Haven & Hartford Railroad Company, which connects with the Pennsylvania Railroad at Jersey City by a system of car floats operated by the New Haven road between Jersey City and its Harlem River Station in New York City.

This traffic from Wilmington is also routed via Norfolk, that is to say, via Pinnars Point or Portsmouth, places adjacent to Norfolk and involving practically the same haul as that to Norfolk. Traffic routed this way goes by the Atlantic Coast Line to Pinnars Point or the Seaboard Air Line to Portsmouth, where it is delivered to the defendant, the New York, Philadelphia & Norfolk Railroad Company, which transfers the cars in floats or barges about 36 miles across Chesapeake Bay to its railroad terminus at Cape Charles, Va., from which point the cars are hauled by that company to Delmar, Del., where delivery is made to the Pennsylvania. From Delmar the traffic is carried by the Pennsylvania System to Philadelphia, Jersey City and New York, and from Jersey City to Boston by the New York, New Haven & Hartford Railroad Company.

Some shipments may go from Norfolk via the Seaboard Air Line or Atlantic Coast Line through Richmond to northern cities, but the great bulk of the lumber traffic from Norfolk and vicinity is shipped north by this Cape Charles route or by water.

The distance from Wilmington to Pinnars point by the Atlantic Coast Line is 240 miles. The distance from Wilmington to Portsmouth by the Seaboard Air Line is 382 miles. The distance from Pinnars Point or Portsmouth to Philadelphia is about 255 miles, to Jersey City 346 miles, to Boston 586 miles. The total distances by the Atlantic Coast Line and Seaboard Air Line and connections north therefore are, respectively, 495 and 637 miles to Philadelphia; 586 and 728 miles to Jersey City; and 826 and 968 miles to Boston. The Boston distances are figured upon 240 miles from Jersey City to Boston via the short line of the New Haven System.

4. The all-rail lumber rates from Wilmington via Richmond or Norfolk and Cape Charles are the same. The arbitraries or rate divisions secured by the Atlantic Coast Line or Seaboard Air Line on traffic from Wilmington are substantially the same whether the Cape Charles or Richmond route is used. Practically all of complainant's all-rail shipments from Wilmington go north by the Norfolk or Cape Charles route, and the rates and facts pertaining to the transportation over the Cape Charles route only will be stated and considered in this report. Most,
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if not all, of complainant's shipments by rail to the north have gone by the Seaboard Air Line from Wilmington, but there is nothing to indicate that it receives better treatment by that line or that complainant would not also ship by the Atlantic Coast Line under more favorable rates.

The through rate from Wilmington is made by adding a rate fixed by the roads south of Norfolk to a rate made by the roads north of Norfolk. The points of junction between the north and south roads on this through business from Wilmington are Pinners Point (Atlantic Coast Line) and Portsmouth (Seaboard Air Line); the New York, Philadelphia & Norfolk receiving the freight at such points for transportation over its own and connecting roads to destination. Pinners Point and Portsmouth are situated on the Elizabeth River or Norfolk Harbor opposite the city of Norfolk, and the New York, Philadelphia & Norfolk barges or car floats take cars from all three points. It also carries traffic north from Port Norfolk, which is located opposite Norfolk and adjacent to Pinners Point. The haul to the north from these points is practically the same. As shown upon a map issued by the United States Coast and Geodetic Survey, these points are located with reference to the barge haul to Cape Charles, the terminus of the New York, Philadelphia & Norfolk road, in the following order: First, Port Norfolk and Pinners Point, about equi-distant from Cape Charles; second, Norfolk; third, Portsmouth.

The proportional rate or arbitrary from Wilmington to Pinners Point or Portsmouth used on through shipments from Wilmington is 10 cents per 100 pounds ($1\frac{1}{2}$ cent less than the regular local rate), except on shipments to New York City, when a proportion of 8 cents, in effect since November 16, 1900, is used. The local rate of $10\frac{1}{2}$ cents also applies to Norfolk by both the Atlantic Coast and Seaboard Air Lines on shipments from Wilmington. The rates or proportions from Pinners Point and Portsmouth applied on through Wilmington shipments to Philadelphia, Jersey City and Boston are per hundred pounds as follows: 10 cents to Philadelphia, 13 cents to Jersey City and 16 cents to Boston. Combining these rates or proportions gives the following through or total rates from Wilmington: 20 cents

to Philadelphia, 23 cents to Jersey City and 26 cents to Boston.

The roads north of Pinners Point and Portsmouth make and exact the proportions above named for their haul to Philadelphia, Jersey City and Boston on all lumber coming to them from south of Norfolk. The carriers south of Norfolk make and exact their proportions, or apply their locals as the case may be, from the various points of shipment to Pinners Point or Portsmouth. The Seaboard Air Line is party to a joint tariff showing the total through rates. The Coast Line is also party to a joint tariff showing the total through rates which became effective April 1, 1901. Its previous tariff, however, names proportional rates to Pinners Point and Portsmouth, and the proportional rates from Pinners Point or Portsmouth to Philadelphia and Jersey City and other points. To Boston the through rates are named in separate joint tariffs. In whatever way the through rates are named, the southern roads must allow the fixed minimum rates or arbitraries established by the roads north of Norfolk, and their own rates or proportions are added thereto.

The local lumber rates from Norfolk are 8 cents to Philadelphia, 9 cents to Jersey City and 15 cents to Boston. These rates are shown in a tariff issued by the New York, Philadelphia & Norfolk Railroad Company. These rates are also in effect from Portsmouth, Va. The same rates are published by that company as in force from Port Norfolk. They are also in effect from Berkley, at which point the Elizabeth River branches south and east, the southern branch separating Berkley and Portsmouth and the eastern branch separating Berkley and Norfolk.

The through rates from Wilmington made as above stated are higher than the combinations of local rates to and from Norfolk or Portsmouth as shown below:

	To Philadelphia.	To Jersey City.	To Boston.
Through rates from Wilmington	20	23	26
Combined locals to and from Norfolk or Portsmouth	18½	19½	25½
Difference	1½	3½	½

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The through rates from Wilmington are higher than the combinations of proportional rates from Wilmington to Portsmouth and the locals from Portsmouth, as shown below:

	To Philadelphia.	To Jersey City.	To Boston.
Through rates from Wilmington . . .	20	23	26
Combined proportionals to Portsmouth and locals from Portsmouth . . .	18	19	25
Difference	2	4	1

It appears from the foregoing statement of rates that the New York, Philadelphia & Norfolk and its northern connections charge more on Wilmington traffic received at Portsmouth or Pinners Point than they do on traffic shipped locally from Norfolk, Portsmouth, Berkley or Port Norfolk, the differences in favor of such local shipments and against the through shipments being 2 cents to Philadelphia, 4 cents to Jersey City and 1 cent to Boston. On the other hand, the Atlantic Coast Line and the Seaboard Air Line charge within $\frac{1}{2}$ cent as much to Pinners Point and Portsmouth, respectively, on through shipments to the north as they do on local shipments to Norfolk. The through rates over the routes via Richmond are lower in each instance than the combination of rates to and from Richmond. The proportion of 8 cents per 100 pounds, above stated to apply from Wilmington to Pinners Point or Portsmouth on lumber destined to New York City, has been in effect since November 16, 1900. It will be observed that the 10-cent proportion or arbitrary to Pinners Point or Portsmouth applies alike on shipments to Philadelphia, Jersey City and Boston, but that this lower 8-cent proportional to Pinners Point and Portsmouth can under the tariff be applied only upon shipments destined to New York City. Why the lower proportional rate confined to New York shipments was made effective cannot be stated, as the date of its publication was subsequent to the hearing in this case. While this 8-cent proportional rate is applied on shipments to New York City, shipments to Jersey City, which is situated on the Hudson River opposite New York, are required to pay 2 cents more, competition being apparently as effective at Jersey City

as at New York, and the expense of carriage being less to Jersey City than to New York.

The 8-cent proportional rate combined with the proportional rate of 13 cents from Pinners Point or Portsmouth to New York City makes the total rate 21 cents. This 21-cent rate covers lighterage from Jersey City to designated delivery points in New York City. That rate, notwithstanding such free lighterage, is 2 cents less than the rate of 23 cents in force on shipments from Wilmington over the shorter distance to Jersey City. The local rate from Norfolk to Jersey City is, on the other hand, 3 cents less than the rate from Norfolk to New York, which is 12 cents. Adding the 8-cent proportional rate in force to Portsmouth to the 9-cent local to Jersey City would give 17 cents for the through haul from Wilmington to Jersey City as against the present through rate of 23 cents, and as against the present through rate of 21 cents to New York. The rate to New York was formerly 26 cents.

Philadelphia and Boston, like New York and Jersey City, are large receiving and consuming markets for lumber shipped from Wilmington and other points in the south. Shipments from Wilmington and Norfolk may be carried wholly by water to Philadelphia with the same facility as they can be by that method of transportation to New York or Jersey City. The same finding applies in regard to Boston shipments, except that lumber cannot apparently be towed in barges from Norfolk and other points in that section to Boston. Applying the 8-cent proportional rate from Wilmington to Portsmouth or Pinners Point (which is in effect only upon New York shipments) to shipments from Wilmington to Philadelphia and Boston, and using the locals in effect from Portsmouth or Norfolk, result in the following combinations: To Philadelphia 16 cents and to Boston 23 cents.

The through rates from Wilmington to Philadelphia, Jersey City and Boston, and the component parts of such through rates applying south and north of the points of junction at or near Norfolk, were in force before the complaint was filed on March 10, 1899, and have been continuously in effect up to the present time; but the local rates from Norfolk and Portsmouth have

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been increased and decreased since the filing of the complaint, as follows: To Philadelphia the rate was 10 cents up to May 10, 1900, when the rate was advanced to 11 cents, which remained in force until August 12, 1900, on which date it was reduced to 8 cents; to Jersey City, 12 cents up to May 10, 1900, when it was advanced to 13½ cents, which remained in force until August 12, 1900, on which date it was reduced to 9 cents; to Boston, 16 cents up to May 10, 1900, when it was reduced to 15 cents.

The sole reduction in rates from Wilmington has been in the rate to New York.

The rates per ton per mile accruing to the carriers under the rates from Wilmington to Pinners Point and Portsmouth, and from Pinners Point, Norfolk, Portsmouth and Wilmington to the northern destinations involved, are as follows:

Proportional rate 10 cents, Wilmington to Pinners Point, Atlantic Coast Line, 3.333 mills per ton per mile, distance 240 miles.

Wilmington to Portsmouth, Seaboard Air Line, 5.235 mills per ton per mile, distance 882 miles.

10-cent proportional rate, Pinners Point or Portsmouth to Philadelphia, 7.843 mills per ton per mile, distance 255 miles.

13-cent proportional rate, Pinners Point or Portsmouth to Jersey City, 7.513 mills per ton per mile, distance 346 miles.

16-cent proportional rate, Pinners Point or Portsmouth to Boston, 5.460 mills per ton per mile, distance 586 miles.

8-cent local rate, Norfolk or Portsmouth to Philadelphia, 6.274 mills per ton per mile, distance 255 miles.

9-cent local rate, Norfolk or Portsmouth to Jersey City, 5.202 mills per ton per mile, distance 346 miles.

15-cent local rate, Norfolk or Portsmouth to Boston, 5.119 mills per ton per mile, distance 586 miles.

20-cent through rate, Wilmington to Philadelphia, 8.080 mills per ton per mile, distance 495 miles.

23-cent through rate, Wilmington to Jersey City, 7.849 mills per ton per mile, distance 586 miles.

26-cent through rate, Wilmington to Boston, 6.295 mills per ton per mile, distance 826 miles.

The 8-cent proportional rate from Wilmington to Pinners Point or Portsmouth on shipments to New York gives the Atlantic Coast Line for its distance of 240 miles 6.666 mills per ton per mile, and the Seaboard Air Line for its distance of 382 miles 4.188 mills per ton per mile.

The average rate per ton per mile on all freight carried by the Atlantic Coast Line for the year ending June 30, 1899, was 1.477 cents, and for the Seaboard & Roanoke and Carolina Central roads, parts of the Seaboard Air Line, it was 1.588 cents and 1.396 cents, respectively; for the New York, Philadelphia & Norfolk Railroad Company it was 9.75 mills, the Pennsylvania Railroad Company 4.69 mills, and the New York, New Haven & Hartford 1.411 cents. The average rate per ton per mile received by all roads in Group 4 of "Statistics of Railways," issued by the Commission, and which includes the Atlantic Coast Line and part of the Seaboard Air Line, was 5.94 mills. The average rate per ton per mile received from all freight by roads in Group 2, which includes the New York, Philadelphia & Norfolk and Pennsylvania Railroads, was 5.82 mills, and the average rate per ton per mile received by all roads in Group 1, which includes the New York, New Haven & Hartford Railroad, was 1.123 cents.

5. The rates from Norfolk, Portsmouth, Berkley and Port Norfolk to Philadelphia, Jersey City, New York and Boston are unquestionably made to meet the competition of carriers by water between the same points. It appears from the testimony and from statements made in their tariffs that the roads north of Norfolk look upon this as a compulsory condition which justifies higher rates from Norfolk or vicinity on lumber traffic originating at Wilmington or other points south of Norfolk and seeking the same northern markets. This, however, applies to but one part of the rate from Wilmington, and it should be observed that while the rate from Wilmington, taken as a whole, is a through charge applying on through shipments to the north, it is made up in reality of two arbitraries, just as it would be if two locals were used. For example, the 10-cent arbitrary or proportional to Pinners Point or Portsmouth is $\frac{1}{2}$ cent less than the local to Norfolk or Portsmouth, and, as shown, the arbitrary

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or proportional charged by the carriers north of Pinners Point or Portsmouth exceeds the straight rate from Portsmouth or Norfolk. The result is that the through rate is higher than a rate made by combining the charges to and from Norfolk or Portsmouth. The roads south of Norfolk formerly charged their full local from Wilmington to Pinners Point or Portsmouth, but some years ago reduced it by $\frac{1}{2}$ cent.

Through rates frequently *equal* the sum of locals charged to and from an intermediate locality, and in the south most rates to or from interior noncompetitive points are made by taking the rate to or from a competitive point and adding the local between the latter and the non-competitive station; but it seldom, if ever, happens that the through rate from an interior noncompetitive point is made to exceed the sum of the rates to and from any intermediate locality, however strong and controlling the competition at such intermediate point may be. Through rates higher than combinations of local charges are extremely rare in railroad transportation, and those which have been brought to our attention have only been approved when occasioned by extraordinary and peculiar circumstances. They have not been justified in any case by the fact of water or other competition at points of junction between the connecting roads.

The reason for this is plain. Ordinarily through shipments are carried by connecting roads at rates *less* in amount than those of the combined locals, and, primarily, this is so because the necessities of commerce require it and because it is commonly *less expensive* to the carriers to transport through traffic than to perform the services involved in two local shipments to and from some intermediate station; and it is hardly conceivable that the carriers' cost of through carriage can in any case be greater than that of supplying the two distinct local services.

A local shipment of lumber from Wilmington to Portsmouth or Norfolk involves placing a car in position to be loaded, allowing the usual time for loading, billing the shipment, switching the loaded car to the main track and placing it in the train, hauling it to Portsmouth or Norfolk, placing it in position to be unloaded upon a depot or side track, allowing the usual time for unloading, issuing the expense bill and collecting the freight

money, and, it may be, switching the car from the side track without reloading. The same items of work and expense are involved in receiving, transporting and delivering a car shipped locally from Norfolk or Portsmouth to Philadelphia, Jersey City or Boston. When the shipment is through from Wilmington by the way of Portsmouth or Pinnars Point there is but one loading, one billing, one delivery, one unloading, and one collection of freight money, and the carriage instead of being broken in two is as continuous as the facilities of interchange provided by the carriers may permit.

The complainant can ship its lumber to Portsmouth or Norfolk and reship the same therefrom to northern cities at the local rates in force to and from Portsmouth or Norfolk; and when the roads south and north of Norfolk make a through route from Wilmington to the north, operating through cars, providing for through billing, and collection of rates as single charges for the entire service, thereby diminishing the cost of transportation to themselves, a through charge exacted by them which is greater than the sum of such local rates is unreasonable as well as unjustly discriminating and wrongfully prejudicial to the complainant engaged in competition with manufacturers in and about the city of Norfolk. Something is said in the testimony to the effect that a terminal provided for the interchange of through business may be *as* expensive to maintain as one for local business, but there is nothing to indicate that to be the fact as to the points of interchange involved in this case, and if it is it would not warrant a finding that these through charges are necessarily *greater* than the sum of the local rates over the connecting roads. If there is any dissimilarity in the circumstances and conditions governing the transportation from Pinnars Point, Portsmouth, Norfolk and Port Norfolk it is in favor of the through traffic carried north from Pinnars Point or Portsmouth.

An additional consideration is that Wilmington also possesses ample facilities for the transportation of lumber by water to northern seaports, and if rail rates from Norfolk are made to meet water competition the rail rates from Wilmington are affected by the same condition, unless the carriers choose to ignore that condition. There is no suggestion in the record that

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the interests of carriers north of Norfolk and adjacent points are better served by carrying lumber from those points than from Wilmington. On the contrary, it does appear that lumber from Wilmington and other points south of Norfolk forms a large and important item of traffic to the Atlantic Coast and Seaboard Air Lines and the connecting line from Portsmouth and Pinnars Point.

6. When the complaint was filed March 10, 1899, the following local rates, which also applied on through shipments to the north, were in force to Pinnars Point and Portsmouth from points in North Carolina: Wilmington 10 cents; Castle Hayne (8 miles north of Wilmington), 10½ cents; Bowdens (57 miles north of Wilmington), 10½ cents; Goldsboro (84 miles north of Wilmington), 9½ cents; Elm City (114 miles north of Wilmington), 9½ cents; Rocky Mount (121 miles north of Wilmington), 9 cents; Parmele (on a branch road 106 miles from Norfolk, Wilmington being 245 miles), 8 cents; Washington (on a branch road 195 miles from Norfolk, Wilmington being 245 miles), 8 cents. These stations are all on the Atlantic Coast Line. From Aberdeen, a large lumber point in the interior of North Carolina on the Seaboard Air Line about 237 miles from Norfolk, the rate to Portsmouth was and still is 10½ cents, and the through rates to Philadelphia, Jersey City and Boston are the proportions above shown for the distances added thereto.

On April 10, 1900, the rates from the above-named Atlantic Coast Line points, except Parmele and Washington, were all reduced—Castle Hayne to 9 cents, Bowdens, Goldsboro and Elm City to 8 cents. It appears from these changes that the rates, which formerly ranged from 10½ cents at Castle Hayne, near Wilmington, down to 8 cents at Parmele, are now 9 cents from Castle Hayne and 8 cents from Bowdens and Parmele. These rates apply to New York City as well as Philadelphia, Jersey City and Boston traffic. The rate from Washington, N. C., was formerly 8 cents, but on April 10 last it was advanced to 8½ cents by the Atlantic Coast Line.

The reduction of rates from points on the Atlantic Coast Line north of Wilmington, stopping 8 miles north of Wilmington at

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Castle Hayne, should apparently include Wilmington. While the evidence does not show it, such reductions having taken place since the hearing, it would seem from the situation and relative importance of the two points that no peculiar conditions exist which entitle Castle Hayne to have its rate to Portsmouth and Pinners Point reduced from 10½ to 9 cents while the Wilmington rate is maintained as before at 10 cents. Apparently, the reduction made by the Atlantic Coast Line in 1900 at various points north of Wilmington was wrongfully withheld from Wilmington, and it seems indicated that a proper reduction in the proportional rate on lumber from Wilmington to Portsmouth or Pinners Point would have been from 10 to 9 cents per 100 pounds.

CONCLUSIONS.

The complainant relies to some extent upon the theory that the rate per ton per mile from Wilmington on lumber shipped to northern markets should be as low as, if not lower than, the rate per ton per mile for the shorter distance from Norfolk and vicinity. The findings show that the rate per ton per mile from Wilmington is higher than it is from Norfolk. This indicates that the rate adjustment as between Wilmington and Norfolk on shipments north is not based upon the well-known principle that while the aggregate rate should increase, the rate per ton per mile should decrease, as distance increases. That rule, however, is not one required by the statute and is subject to qualifications and exceptions. *Manufacturers' & Jobbers' Union v. Minneapolis & St. L. Ry. Co.* 4 I. C. C. Rep. 79, 3 Inters. Com. Rep. 115. Group rates extending over considerable areas disregard that portion of the rule which recognizes the propriety of increasing the aggregate rate as the distance increases, and yet such rates are not considered illegal unless they operate to subject some shipper, locality or species of traffic to undue or unreasonable disadvantage. For the same reason the circumstance that with increase in distance the rate per ton per mile does not decrease, and may actually increase, cannot be said to have material bearing if the rate which yields it does not subject

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the complainant or a particular locality to undue hardship. This is forcibly illustrated in the present case. If the 8-cent proportional from Wilmington to Pinners Point or Portsmouth in force on New York shipments were applied to Jersey City shipments in connection with the 9-cent local from Portsmouth or Norfolk to Jersey City, the total rate of 17 cents would give a through rate per ton per mile of 5.829 mills, which exceeds the rate per ton per mile of 5.202 mills applying over the shorter distance from Norfolk under the 9-cent local to Jersey City. Thus, with a reduction from 23 to 17 cents in the rate from Wilmington to Jersey City the through rate per ton per mile would still be higher than the rate per ton per mile for the greatly less distance from Norfolk, and there is nothing in this case to indicate that the 17-cent rate would be unreasonable or unjust to the complainant. Extending the 5.202 mills per ton per mile applying from Norfolk to shipments from Wilmington to Jersey City would result in a rate of $15\frac{1}{4}$ cents per 100 pounds.

Considerable testimony was also introduced on behalf of complainant which shows comparisons of rates and rates per ton per mile from mills on other roads in the south to Norfolk with those from Wilmington, and similar testimony as to rates in other sections of the country was also submitted. This testimony was not supported by such showing of transportation and market conditions as would render the testimony in this respect of decisive force in our consideration of the case, and for that reason the facts indicated thereby are not included in the findings. We are nevertheless not convinced by the testimony that the through rates complained of, or the proportional rates of which such through rates are composed, are in themselves reasonable for the service rendered, but we deem it unnecessary at this time to discuss that question. In our view, the decision may well rest upon the much more certain ground of discrimination or prejudice shown in the rate adjustment involved.

The points thus raised for consideration are: 1. That the through rates from Wilmington are higher than the sum of local rates from Wilmington to Portsmouth or Norfolk and the joint rate from Portsmouth or Norfolk to Philadelphia, Jersey City

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or Boston. 2. That the Atlantic Coast Line and Seaboard Air Line have put in an 8-cent rate or proportion from Wilmington to Pinners Point or Portsmouth on shipments to New York City, but charge a higher rate or proportional of 10 cents on shipments to Jersey City and Philadelphia, both shorter distance points, and also to Boston. 3. That the Atlantic Coast Line reduced its rates on lumber to Pinners Point from points north of Wilmington, including Castle Hayne, which is about 8 miles from that seaport city, but made no reduction in the rate from Wilmington.

This seems to be the first case submitted to the Commission during the 14 years since the regulating statute was passed showing a through freight charge over connecting roads in excess of a combination of charges applying to and from an intermediate point on the through line.

In one case, decided in March, 1888, *Business Men's Asso. v. Chicago & N. W. Ry. Co.* 2 I. C. C. Rep. 73, 2 Inters. Com. Rep. 48, in which only the reasonableness of rates over one railway was involved, and no question of competition between business interests and localities was apparently presented, rates from Chicago to several local stations beyond St. Peter, Minn., were higher than the combination of rates to and from St. Peter. The Commission said: "No reason that we are aware of exists that could justify this anomalous condition of affairs." As the principal question involved was the reasonableness of the rates to points between St. Peter and Pierre from Chicago, and some peculiar transportation conditions were found to exist at St. Peter, the whole matter was reserved for further inquiry in a separate proceeding to be instituted by the Commission. This additional inquiry does not appear to have been had, either because it was not afterwards called to the attention of the Commission or, more likely, on account of subsequent changes in rate conditions and rates in that territory which rendered it unnecessary.

Two passenger cases involving higher interstate fares than the sum of local fares fixed by the respective States have been decided by the Commission. In *Railroad & Warehouse Comrs. v. Eureka Springs Ry. Co.* 7 I. C. C. Rep. 69, the defendant carried 9 I. C. C. REP.—3.

ried passengers between Seligman, Mo., and Eureka Springs, Ark., 18½ miles, at the rate of 10 cents a mile. A statute of Arkansas limited the passenger fare in that State to 5 cents a mile, and under the Missouri law but 4 cents a mile could be charged in that State. The Commission ordered that the through rate should not exceed \$1.20 (6½ cents a mile). Under such maximum, the through rate, amounting to 82½ cents, was still in excess of the combined State rates. This was permitted in consideration of the meagre traffic earnings of the carrier. We said in that case that ordinarily the whole charge should not be more than all its parts and that under favorable financial and business conditions we would not hesitate to find any passenger rate between Eureka Springs and Seligman in excess of 82½ cents unreasonable. Commissioner Knapp, dissenting from the view of the majority that the 10-cent proportional rate was unreasonable, said: "The rates complained of are in no sense discriminatory. They do not occasion injury by relative injustice between rival towns or competing articles of traffic. If they did a very different question would be presented. The necessity for a given amount of earnings is no justification for wrongdoing of that character."

In the other passenger case referred to, *Savannah Bureau of Freight & Transportation v. Charleston & S. Ry. Co.*, 7 I. C. C. Rep. 601, the passenger rate between Savannah, Ga., and Charleston, S. C., was involved. This rate was greater than the combination of rates allowed by Georgia and South Carolina, and it was made so by an act of the South Carolina legislature limiting the rate within that State to 3¼ cents per mile unless otherwise provided by the State Railroad Commission. We held that the Federal Act contains no provision under which the interstate fare must necessarily be reduced because the South Carolina mileage rate was lowered by the State act, or be varied according to a different mileage rate which might be fixed by the State Commission. The Commission further observed in that case that the record contained no indication of injury to residents of Savannah on account of the rates in question, or that merchants in that city were in any way unduly prejudiced by such rates in their competition with dealers in

Charleston for trade in the section served by the defendant railway. In these passenger cases the rates within the States were fixed by law. In one, the carrier could not afford to do the light interstate traffic under the State rates so established, and in the other it was plain that the legality of the interstate rate could not be held to depend upon changes which might from time to time be made by the legislature or railroad commission of one of the states. There was no suggestion in either of relative injustice or undue disadvantage to any person or locality.

In the case under consideration the rates from Wilmington to Norfolk, Portsmouth and Pinners Point are interstate rates, those from such points to Philadelphia, Jersey City and Boston are interstate rates, and these rates have been established by the carriers themselves in accordance with their ideas of conditions appertaining to the traffic and the revenue necessary to be derived therefrom. In fixing and adjusting these rates they were unhampered by any rate fixed by law or authority of law, and the sole reason which can be assigned for the higher through rates from Wilmington than the combination of rates to and from Norfolk or Portsmouth is stress of competition at Norfolk and points adjacent to that city. That might constitute justification for making a through rate which would be as high as the combination of these intermediate rates, but neither competition nor the need of greater revenue can operate to justify such unjust discrimination as is evidenced by a through rate on traffic from a competing locality higher than the combination of separately established charges to and from another competing locality on the direct through line.

The complainant has the legal right under the tariffs of the Atlantic Coast Line and Seaboard Air Line to ship a carload of lumber from Wilmington to Norfolk or Portsmouth at a rate of 10½ cents per 100 pounds, and under the tariffs of the New York, Philadelphia & Norfolk Railroad and its connections on the north complainant's consignee in Norfolk or Portsmouth has the legal right to ship that same lumber from that point to Philadelphia, Jersey City or Boston at 8, 9 and 15 cents per 100 pounds, respectively. There is nothing to prevent the com-

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plainant from shipping the lumber to itself at Norfolk or Portsmouth and having the reshipment made for its own account. Indeed, it might, for example, ship over the Seaboard Air Line to Portsmouth to its own order, direct delivery to the New York, Philadelphia & Norfolk, and by separate order direct the New York, Philadelphia & Norfolk to ship the car to Philadelphia, Jersey City or Boston. The Seaboard Air Line could, it is true, refuse to permit its car, thus used for a local shipment to Portsmouth, to be sent north on reshipment, notwithstanding the same car might be employed in a through shipment from Wilmington, but if it took that position it would be with a view of preventing the complainant or other Wilmington shipper from utilizing a lower combination of rates, and not for any justifiable traffic purpose.

Carriers in various sections of the country have, whether legally or illegally has never been authoritatively determined, fallen into a custom of making local and proportional rates between the same points, the local applying on freight intended to be actually delivered, and the proportional upon freight consigned from some more distant point of shipment or to some more distant destination, but in no previous case submitted to the Commission for decision has the proportional been higher than the local. The practice of making such lower proportional rates has been mainly defended upon the grounds that it constitutes in reality a share of a through rate on through traffic which is carried at less expense to the carrier than that entailed in local service, and that commercial conditions necessitate the carriage of through traffic at rates less in the aggregate than the sum of local charges. A proportional *higher* than the local or straight rate between the same points disregards both of these fundamental considerations. As the findings show, there is no suggestion that transporting Wilmington lumber from Pinners Point or Portsmouth is in any respect more expensive to the carriers north of those points than transporting lumber shipped from Norfolk, Port Norfolk or Portsmouth.

The rates from Wilmington to Philadelphia, Jersey City and Boston, to the extent that they exceed the sum of rates from Wilmington to Norfolk or Portsmouth and from the latter points

to the northern destinations mentioned, are in violation of section 3 of the statute. We also think they violate the first section.

We are also of opinion that in charging a through rate which exceeds the sum of the locals by reason of the fact that the proportion from Portsmouth north exceeds the local from that point, these carriers violate the second section. A carload of lumber shipped north from Wilmington is carried by the Seaboard Company to Portsmouth and there delivered to the line leading north. That line exacts from the Wilmington dealer a greater charge than would be imposed if the lumber originated at Portsmouth or Norfolk for the reason that it comes from Wilmington. The circumstances and conditions applying on the transportation from Portsmouth, Norfolk or vicinity are substantially similar whether the lumber originates there or at Wilmington, or if any difference exists it is in favor of the through Wilmington business. Such higher charge on the Wilmington traffic is clearly against the rule of the *Wight* case (*Wight v. United States*, 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. Rep. 822), which lays down the principle that competitive conditions cannot excuse the imposition of a greater charge for like service under the second section.

The carrier receiving the Wilmington lumber at Portsmouth as a new shipment to the north has no right to inquire into its origin or how it comes to be offered for transportation. Being there, it must transport it for all shippers at the same rate. If Wilmington lumber could only come to Portsmouth upon a joint rate the matter might stand differently, but so long as it can be brought there upon the local rate the carrier is obliged to carry it forward upon another local rate or whatever rate is in force to destination from that point; and this being so, both law and fair dealing forbid these carriers from entering into any sort of an agreement which will prevent the shipper at Wilmington from availing himself of those rates which by their published tariffs are open to the public. It is plain, therefore, that upon every consideration the through rate from Wilmington should not exceed the sum of the rates to and from Portsmouth, Norfolk or points in that vicinity to the northern destinations.

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Thus far we have considered the charges from Wilmington as through rates. These charges from Wilmington appear by the evidence, however, to be made up of two distinct rates or arbitraries, either of which can be changed by the carriers making them without the assent or concurrence of the others. The total rates have been named in joint tariffs, and they may be in law joint through rates, but apparently the only agreement required is that authorizing issuance of the tariff. The component parts of the total rates are those named for all lumber coming to the northern lines at points in the vicinity of Norfolk and those made by the southern roads from points of shipment to points in the vicinity of Norfolk. The testimony shows that the Atlantic Coast Line or Seaboard Air Line can reduce or increase the proportional rate from Wilmington independently of the carriers north of Norfolk, and that these northern carriers can increase or reduce the proportion or arbitrary from Pinners Point or Portsmouth without securing the agreement of the southern roads or either of them. The carriers south and carriers north are free to adjust these proportional rates exactly as they see fit. The total rates are not fixed according to mileage or upon any percentage basis. The Commission may, therefore, consider and pass upon these separately made proportions or arbitraries. In saying this we do not mean to intimate that the divisions accruing to the carriers might not be considered in this case if the rate itself was made and published as a strictly joint rate.

At the present time carriers leading north from Pinners Point and Norfolk, charge a proportion or arbitrary on Wilmington business which is more than their local rate from Norfolk or Portsmouth or points in that vicinity. The excuse apparently is that the local rate from Norfolk, Portsmouth and adjacent points has been forced down by water competition. Divisions of joint rates are usually less than corresponding locals and almost without exception not greater. Without determining whether a case might not arise in which such division could with propriety be made greater than the local rate, we are clearly of the opinion that no such case is presented here where the total through rate on competitive traffic exceeds the

sum of the charges to and from an intermediate point. While the rate from Norfolk north is undoubtedly affected by water competition, we do not find under all the circumstances that it is extravagantly low; or that, considered as a division of a long distance through rate, it can even be said to be in any way unreasonably low.

Norfolk and Wilmington are in competition in this lumber business. There is water competition from Wilmington as well as from Norfolk to the points of destination herein involved. A concession in the freight rate to the lumber manufacturer at Norfolk is a serious handicap to the complainant at Wilmington. When these lines transport lumber from Norfolk or vicinity to northern destinations for a less rate than they will transport the complainant's lumber from the same point, the latter involving probably less and certainly no greater cost of service to the same destinations, they are guilty of a discrimination against the complainant which we are clear must, upon the facts of this case, be held to be an unjust discrimination and an undue preference. Certainly, until water competition or some other force over which these carriers have no control has forced down the rates from Norfolk or Portsmouth north to a point materially lower than those now in force, the carriers should not exact on through business from Wilmington a proportion higher than their straight rates from Norfolk or Portsmouth.

As to the through charges higher than the sum of rates to and from Norfolk and Portsmouth, the point was presented upon the rates shown in the complaint as in force to Jersey City; there was testimony in regard to it, and it is, moreover, largely, if not altogether, a question of law. The two points remaining for consideration arise wholly from acts done by the carriers since the hearing, and they may be able to show facts which will justify the peculiar rate adjustments resulting therefrom. Conditions may possibly exist which justify and render lawful a relation of rates under which on shipments from Wilmington the Atlantic Coast Line or Seaboard Air Line charges 8 cents for the haul to Pinners Point or Portsmouth when the traffic is destined to New York City and 10 cents when destined to Jersey City, lighterage expense being involved on the New York shipment and none on the Jer-

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sey City business, and such destinations being separated only by the Hudson River. It is possible that some extraordinary competitive or other forceful condition arose or was necessarily taken into account by the carriers in November last which applied to New York and not to Jersey City on shipments only from Wilmington; and that the force of such competitive or other condition had no effect upon the rates from Norfolk or vicinity, which were and are 3 cents higher to New York than to Jersey City. The 10-cent rate or proportion from Wilmington to Pinnars Point or Portsmouth on shipments to Philadelphia and Boston, while for the same service 8 cents is charged upon shipments to New York, all the points involved being seaports and served by water as well as rail transportation, is apparently unlawful, and the through rate from Wilmington to Jersey City higher than the lower longer distance rate from Wilmington to New York is also prima facie unlawful, but no order can properly be entered in regard thereto until after the carriers have been given suitable opportunity to state their defense. The lower 8-cent proportional to New York may actually benefit instead of injure the Wilmington shippers, including the complainant, but upon the rates themselves, the way they are made and the situation of these other seaport markets, Philadelphia, Jersey City and Boston, as compared with New York, it is somewhat difficult to see why if such 8-cent rate or proportion is required for New York shipments it is not equally required in the interest both of Wilmington shippers and their consignees on shipments to Philadelphia, Jersey City and Boston.

The same ruling must apply as to the question of relative injustice presented by the relation in rates on the Atlantic Coast Line from points north of Wilmington, including a point as close as 8 miles to Wilmington, which was not applied by that company at Wilmington, notwithstanding its favorable location as a competitive seaport, while points from which the reductions were made effective had no such advantage. Such action apparently results in undue prejudice to complainant and others at Wilmington, but this carrier may be able to show justification, and if it can it is entitled to do so.

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The issuance of order herein will be suspended for 20 days after service of a copy of this report and opinion, to enable defendant carriers south of Norfolk to prepare and file supplemental answers in regard to the two points last above mentioned, the Atlantic Coast Line as to both points and the Seaboard Air Line as to the discrimination in favor of New York shipments, or to make such changes in the rates thereby involved as will remove the prejudice which now appears to operate unduly against Wilmington. The New York, Philadelphia & Norfolk and connecting carriers north of Norfolk and vicinity should immediately proceed to make the changes in their rates hereinabove directed. Upon the expiration of the period of 20 days specified such order or orders will be entered as the case may seem to require.

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A. W. HOLDZKOM.
v.
MICHIGAN CENTRAL RAILWAY COMPANY AND
OTHERS.

Decided April 13, 1901.

1. In cases involving lower charges for longer than for shorter distances over the same line in the same direction, the shorter being included within the longer distance, all forms of competition must be taken into account, but the mere fact of competition at the more distant point does not of necessity justify the lower longer distance charge. In this case the construction of the third section, or undue preference clause of the statute, is also involved, and under that section at least the question is not merely does some form of competition exist at the more favored point which is not found at the other, but rather do all the circumstances and conditions, giving due regard to the interests of all parties, excuse the preference.
2. Two railroad lines serve both Los Angeles and San Bernardino, and if Los Angeles has means at its command by which it may force a rate from such lines or either of them which San Bernardino does not possess, that is an element which must be considered in determining the legality of a lower rate from the east to Los Angeles, the longer distance point; but the fact that it is a larger town with more business, and therefore that competition between the lines is fiercer there than at San Bernardino, does not justify the disparity in charges in favor of Los Angeles. The two roads cannot agree to compete here and not compete there. In their capacity of public servants ministering to the wants of these communities they must not favor one above the other simply because it is stronger to begin with. One of the underlying principles of the Act to regulate commerce is equality between great and small.
3. Traffic brought from the east by the U. P., N. P., G. N. and C. P. Rys. to various Northern Pacific seaports can be carried from thence to Los Angeles without passing over the routes of either the S. P. or S. F. Systems, but it must pass over one of such roads to reach San Bernardino. Merchandise by these rail and water routes to Los Angeles

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must be transported by rail across the continent, transshipped and carried 1,200 miles by ocean, and again transshipped for another 20 miles rail haul before it reaches Los Angeles in competition with the S. P. or S. F. Ry. *Held*, That while traffic may be and at times actually is carried by such circuitous rail and water routes, it is questionable whether it ought to be, and the Commission does not hold in this case that such competition in itself constitutes justification for a higher rate at an intermediate point like San Bernardino than is enforced on traffic from the east to Los Angeles.

4. The conditions affecting traffic, including carriages and buggies, from eastern points are rendered substantially different at Los Angeles than at San Bernardino, a shorter distance point on the same line, by the competition of carriers wholly by water from the Atlantic Seaboard to Port Los Angeles, a point on the Pacific Coast near Los Angeles, and the effect of such competition by water direct to San Francisco is, upon all the circumstances, properly recognized at Los Angeles by giving that city all rail rates from the east as low as those in effect to San Francisco.
5. No opinion is expressed as to whether rates from the East to San Bernardino made by combining the rates to Los Angeles with the locals back to San Bernardino can lawfully be constructed in that manner, the evidence being insufficient to enable the Commission to determine the question. *Danville v. So. Ry. Co.*, 8 I. C. C. Rep. 409, 571, and *Hampton v. N. C. & St. L. Ry. Co.*, 8 I. C. C. Rep. 503, cited and distinguished.

Edmund E. Katz for complainant.

Henry Russell and *Ashley Pond* for the Michigan Central R. R. Co.

E. D. Kenna, *Robert Dunlop* and *C. N. Sterry* for the Atchison, Topeka & Santa Fé System.

REPORT AND OPINION.

PROUTY, Commissioner:

The complainant is a dealer in buggies and carriages at San Bernardino, Cal., and his complaint is that the defendants charge for the transportation of these articles from Jackson, Mich., to San Bernardino a rate which is higher than that charged to Los Angeles, a more distant point, thereby violating the third and fourth sections of the Act to regulate commerce. He further alleges that rates in general from territory east of the Missouri River to San Bernardino are higher than those to

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Los Angeles, being therefore in violation of the third and fourth sections, and that both rates on buggies and carriages and rates in general from the Missouri River and territory east to San Bernardino are unreasonable in and of themselves.

The defendants are the Michigan Central Railway Company, the Atchison, Topeka & Santa Fé Railway Company, the Santa Fé Pacific Railroad Company and the Southern California Railway Company and together they constitute a through line from Jackson to Los Angeles which passes through San Bernardino, by which they transport upon through bills of lading at a through rate buggies and carriages as well as other commodities to both San Bernardino and Los Angeles. They admit that the rate upon buggies and carriages and rates in general are higher from eastern territory to San Bernardino, the intermediate, than to Los Angeles, the more distant point, but assert that such rates to San Bernardino are reasonable in themselves and that competitive conditions at Los Angeles create dissimilar circumstances and conditions which justify a lower rate at that point.

January 1, 1901, rates upon buggies and carriages from Jackson, Mich., to Los Angeles and San Bernardino, Cal., respectively, in cents per hundred pounds were as follows:

To Los Angeles C. L. 220; L. C. L. 450;

To San Bernardino C. L. 250; L. C. L. 501;

making a difference in favor of Los Angeles on C. L. of 30 cents and on L. C. L. of 51 cents per hundred pounds. These same rates apply from the Missouri River and territory east.

It is not necessary to state in detail other rates to these respective localities. Generally speaking it may be said that common point territory east of the Missouri River takes a blanket rate to Los Angeles and in most instances to San Bernardino, that class and commodity rates which apply to both San Bernardino and Los Angeles are uniformly higher to the former than to the latter point and that in addition there are in effect many commodity and special rates to Los Angeles which do not apply to San Bernardino, the general result of the whole scheme being to make the transportation charge by rail from the Missouri River and territory east materially higher to San Bernardino than to Los Angeles.

Of the defendants named the Atchison, Topeka & Santa Fé, the Santa Fé Pacific and the Southern California are operated under a common management, being known as the Santa Fé System, and the lines of that system extend from Chicago to Los Angeles and beyond, passing through San Bernardino, which is about sixty miles west of Los Angeles. The Santa Fé System connects at Chicago with the Michigan Central Railroad and with many other railroads from the east. It also connects at Kansas City with many lines from the east and the middle west, and there are other connections at other points upon its route. Through these connections at Chicago, Kansas City and elsewhere it receives traffic from a large portion of the territory lying east of the Missouri River destined to Los Angeles and San Bernardino and it is a party to tariffs under which this traffic is transported. All such traffic of necessity passes through San Bernardino on its way to Los Angeles.

San Bernardino is also served by the Southern Pacific Company. It is not upon the main line but is reached by a branch four miles in length which leaves the main line at Colton. The Southern Pacific Company operates a line of railroad from New Orleans through El Paso to Los Angeles and so to San Francisco, and Colton is upon this line. It has also a line from San Francisco to Ogden, Utah, and from San Francisco to Portland, Oregon. It operates a line of steamships between New York and New Orleans by which it carries much traffic from the Atlantic seaboard for Southern California and San Francisco. At New Orleans it connects with various lines of railway leading from the south and middle west and from these lines it receives traffic destined for Pacific Coast points. Still another connection at El Paso brings to it traffic from all parts of the south, east and west. At Ogden it connects with the Rio Grande Western and the Union Pacific and these lines deliver to it business from all portions of the west and east. Traffic by its route through the El Paso gateway reaches San Bernardino at a somewhat less distance than Los Angeles, but business via Ogden would pass through Los Angeles before reaching San Bernardino.

It will be seen, therefore, that all-rail traffic from all the east-
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ern portions of the United States may reach San Bernardino and Los Angeles by either the Santa Fé or the Southern Pacific, but that, if it goes entirely by rail, it must reach these destinations by one or the other of these two routes.

Los Angeles is not a seaport although in close proximity to the ocean. There are several ports through which it receives ocean traffic, these being San Pedro, Redondo, and Port Los Angeles. The distance from all these ports is about twenty miles. The Southern Pacific Company has a line of railway from Los Angeles to Port Los Angeles and San Pedro, and the Santa Fé System to Redondo.

There are also independent lines of railway from Los Angeles to Redondo and San Pedro. Rail rates from all these ports are: first class 15 cents, second class 12 cents; third class 12 cents, fourth class 11 cents.

Los Angeles also apparently receives ocean traffic to some extent through San Diego which is situated 126 miles distant and is a harbor of considerable consequence. All rail rates from eastern territory are the same to Los Angeles and San Diego but are higher to San Pedro, Redondo and Port Los Angeles by the amount of the local from Los Angeles to these ports.

The testimony in the case as originally made up did not clearly show the route by which water traffic from the east reached Los Angeles, whether directly or by way of San Francisco, nor the relative rate to San Francisco and Los Angeles. For the purpose of determining this the case was opened for further evidence and the testimony of the Traffic Manager of the Panama Railroad and of the New York representative of the American-Hawaiian Steamship Company was taken.

The Panama Railroad maintains a line of steamships of its own from New York to Colon and operates in connection with other lines upon the west from Panama north. It accepts traffic for both San Francisco and Los Angeles but mainly for San Francisco. Traffic for Los Angeles is sent to San Francisco and from thence re-shipped usually by coastwise steamers to Los Angeles. Rates are ordinarily somewhat higher to Los Angeles than to San Francisco, although not uniformly so. San

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Francisco business is more attractive and more sought after by this line.

The American-Hawaiian Line owns its own ships and operates around Cape Horn or through the Straits of Magellan. It accepts traffic for both San Francisco and Los Angeles but ordinarily does not carry freight for both these destinations upon the same vessel. Occasionally traffic for Los Angeles is taken to San Francisco and thence re-shipped by boat to Los Angeles, but as a rule an entire cargo is sent to one point or the other, more cargoes being loaded for San Francisco than for Los Angeles. Rates are somewhat higher usually to Los Angeles than to San Francisco for the reason that the steamship company is obliged to pay the local freight rate from the port of entry to Los Angeles. The general effect of the testimony is to show that traffic moves with about equal freedom from the Atlantic seaboard to both San Francisco and Los Angeles but that the rate to the latter point is somewhat higher by reason of the rail haul from the port of discharge. Neither of those lines has ever carried freight for San Bernardino, and neither of them makes rates to interior points upon the Pacific Coast to any extent.

While neither Los Angeles nor San Bernardino can be reached from the east by any all rail route except the Southern Pacific and the Santa Fé, it is possible to reach Los Angeles by other means. Transcontinental lines touch water communication with the Pacific Ocean at Portland, Tacoma, Seattle and Vancouver. Freight can be transported across the continent to the Pacific Coast at these points by rail and thence sent by water to San Francisco and Los Angeles. The distance from these Pacific Coast points to San Francisco by water is approximately 750 miles and to Los Angeles 450 miles farther. Competition by these combined rail and ocean routes is not only theoretically possible, but actual, especially at San Francisco.

In the making of transcontinental rates certain points upon the Pacific Coast are known as "Pacific Coast Terminals." The only two such points in southern California are Los Angeles and San Diego. Rates to terminal points are the same and are lower than those to other points usually by the amount of the local.

The defendants insist that rates from the east to Pacific Coast terminals are fixed by water competition. The testimony upon that subject in this record is extremely meager, but we have had occasion to fully examine the same question recently in the case of *Kindel v. Atchison, Topeka & Santa Fé Railway Company and Others*, 8 I. C. C. Rep. 608, and we there came to the conclusion that water competition via the Isthmus of Panama and around South America generally fixed the all rail rate from ocean to ocean; and that in the east the combined competition of transcontinental lines and markets had operated to apply this water rate to substantially all the territory east of the Mississippi River. San Francisco is the port at which this ocean traffic is mainly handled, but as already found it moves freely to Los Angeles though usually at a slightly higher rate.

Los Angeles at the present day transacts the greater part of the jobbing business in southern California. San Bernardino, however, engages in wholesaling to some extent and its merchants desire to compete with those of Los Angeles in territory between the two cities, but the present adjustment of rates gives to the Los Angeles dealer an advantage so decided that he can easily undersell his San Bernardino competitor at most points which, having reference to distance and local railroad charges from the two cities ought fairly to be competitive. We find that the higher charge to San Bernardino is a positive injury to that community.

Twenty years ago the jobbing trade in southern California was mostly done from San Francisco, goods being shipped from there largely by water. After the Southern Pacific and Santa Fé lines came in from the east and secured to Los Angeles the same all rail freight rate as was given to San Francisco, the former town increased rapidly in importance, much more so than San Bernardino. In 1880 the comparative population of these two cities was 11,183 and 1673; in 1890, 50,395 and 4,102, while to-day it is 102,479 as against 6,150. Many wholesale houses of San Francisco have established branches at Los Angeles in recent years.

With respect to the item of buggies and carriages, as to which specific complaint is made, the claim of the complainant was

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and his testimony tended to show that these articles are bought exclusively in the middle west at points corresponding to Jackson from which the rate is the same as from Jackson; that they are uniformly shipped all rail from such points to both Los Angeles and San Bernardino, that they are not shipped by water to either of these points, and that they cannot well be carried over a long ocean voyage for the reason that the action of the salt water injures the varnish.

While the testimony of the complainant tended to establish these facts it was extremely unsatisfactory and the case was reopened largely for the purpose of obtaining further information upon this point, the examination of the witnesses above mentioned having been directed to this also. From their testimony in connection with that previously in the case we find:

The action of salt water is liable to injure the varnish and perhaps the iron work of buggies and other vehicles upon long ocean voyages, but if properly packed and protected such articles can be transported by water without serious difficulty. They are at the present time regularly sent to Australian and South American ports. Formerly they were transported by water both across the Isthmus and around the Horn in large quantities to Pacific Coast points. Of recent years the area of manufacture of these articles has moved from the Atlantic seaboard west with the result that the markets of California are mostly supplied at the present time from the west; and shipments from there are exclusively made by rail. It appeared, however, that the next steamer of the American-Hawaiian Company for San Francisco had engagements for the transportation of carriages and carriage material and that negotiations were pending looking to further shipments. The rate at which these goods were taken from New York by water was said to be in car-load lots from \$1.00 to \$1.25; the rate from Chicago to New York 35 cents, and that from New York and all territory east of the Missouri River to Los Angeles \$2.20. It was further said that since buggies could be most advantageously bought in the fall for the California market while they were not usually sold until spring, the long time occupied by the all-water route was not objectionable but rather the reverse.

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From all this it seems evident that water competition in the transportation of these articles does exist and is liable to be active in the future as it was in the past.

The system of rate-making which recognizes Pacific Coast terminals is the outgrowth of agreement between the trans-continental all rail lines. Formerly there was an association which professedly considered and determined transcontinental rates and it was in those days and by open agreement of the lines involved that Los Angeles was made a terminal and given a lower rate than intermediate points. Since the United States Supreme Court has declared that the Antitrust Act applies to railroads and that all agreements for the making or maintaining of interstate rates are illegal, the form and method of such agreements have been changed. Meetings are still had and proposed changes in rates are discussed, but it is said that every line finally acts independently.

CONCLUSIONS.

In May 1889 the San Bernardino Board of Trade commenced a proceeding before this Commission against the Atchison, Topeka & Santa Fé Railway Company and others, complaining that rates from the east to San Bernardino were higher than to Los Angeles, a more distant point, in violation of the fourth section. The defendants answered that circumstances and conditions at Los Angeles were substantially different from those at San Bernardino, relying mainly on water competition to make out such defense.

A decision was rendered July 19, 1890, sustaining the complaint and ordering the defendants to cease and desist from maintaining higher rates to San Bernardino than to Los Angeles. *San Bernardino Board of Trade v. Atchison, Topeka & Santa Fé Railroad Company et al.*, 4 I. C. C. Rep. 104, 3 Inters. Com. Rep. 138.

The defendants refused to comply with this order and proceedings were begun in the Circuit Court for the Southern District of California to enforce the same. After the taking of a great deal of testimony and upon an elaborate consideration of the case the Circuit Court refused to enforce this order, holding

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that circumstances and conditions at Los Angeles differed from those at San Bernardino and that therefore a higher charge to the intermediate point was not prohibited by the fourth section. *Interstate Commerce Commission v. Atchison, Topeka & Santa Fé Railroad Co.* 50 Fed. Rep. 295, 4 Inters. Com. Rep. 323. Counsel for the defendants insists that the decision of the Circuit Court in that case is controlling in the present proceeding.

When the Commission heard the case in 1890 its ruling had been and was in substance that only competition between carriers not subject to the Act to regulate commerce could be shown in making out dissimilarity of circumstances and conditions under the fourth section. The Circuit Court apparently held that other forms of competition might be resorted to and that if actual competition was found to exist, that, in and of itself, relieved the carriers from the operation of the fourth section. As we interpret the decisions of the Supreme Court of the United States, the view of the Commission was clearly wrong and that of the Circuit Court not entirely correct. All forms of competition must be taken into account; but upon the other hand the mere fact that there is competition at the more distant point does not of necessity justify the lower rate. Moreover, in the case before us the construction of the third section is also involved, and under that section at least the question is not merely does some form of competition exist at the more favored point which is not found at the other, but rather do all the circumstances and conditions, giving due regard to the interests of all parties, excuse the preference. Again, the facts in this case, as we have found them, differ somewhat from the facts in that, and the present complainant insists that whatever may be true of other commodities, water competition does not affect the rate on buggies and carriages. We are inclined to think, therefore, that we ought to consider this case *de novo*. The decision of the Circuit Court must be given great weight in determining the questions before us, but it cannot be considered as absolutely controlling.

The defendants rely upon various kinds of competition to make out the dissimilar circumstances and conditions at Los Angeles; and first they set up competition between all-rail carriers.

We have seen in the statement of facts that merchandise can
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and does come from all parts of the east to both San Bernardino and Los Angeles by all-rail routes. It is furthermore true that it generally may be carried from the initial point by one of several different lines or combinations of lines; but by whatever route these commodities start or by whatever line they travel during the initial portion of their journey they must all finally reach their destination by either the Southern Pacific or the Santa Fé System. These roads both serve San Bernardino and they both serve Los Angeles and there is no other avenue by which all-rail freight from the east can reach either of these points. There can be no through tariffs in which these companies do not concur.

The defendants urge that Los Angeles is a large town with more business, that therefore competition between these two lines at that city is fiercer than at the smaller city of San Bernardino and that this is a reason why a lower rate should be made to Los Angeles. We cannot assent to this claim. The fact that ten men are soliciting a rate at Los Angeles and only one at San Bernardino is no better reason why Los Angeles should be granted a preference than as if one man solicited with ten times the earnestness at Los Angeles as did his competitor at San Bernardino. These two railroads cannot agree to compete here and not compete there. In their capacity of public servants ministering to the wants of these communities they must not favor one above the other simply because it is stronger to begin with. If the city of Los Angeles has at its command any means by which it can force a rate from these companies or either of them which the city of San Bernardino does not possess, that is an element which must be considered, but the mere fact that one town is larger than the other is no such reason. One of the underlying principles of the Act to regulate commerce is equality between great and small.

It is alleged that the competition of other transcontinental lines does introduce this new element and should therefore give Los Angeles the better rate. It will be remembered that none of these transcontinental lines can reach either Los Angeles or San Bernardino by an all-rail route without passing over the iron of either the Santa Fé or the Southern Pacific. They can

reach Los Angeles but not San Bernardino in other ways. The Union Pacific, Northern Pacific, Great Northern and Canadian Pacific touch water communication with the Pacific Ocean at Portland, Tacoma, Seattle and Vancouver respectively. From thence it is possible to send traffic by sea to Los Angeles without passing over the rails of either the Southern Pacific or the Santa Fé, but not to San Bernardino. Here, therefore, Los Angeles has an advantage over San Bernardino which these defendants insist should be recognized.

Merchandise by these sea and rail routes must be transported across the continent, trans-shipped, carried 1,200 miles by ocean and again trans-shipped for another 20 miles haul by rail before it reaches the point where it competes with the all-rail lines of the Santa Fé and Southern Pacific. While undoubtedly traffic may be and at times actually is, and perhaps ought to be, carried by these roundabout routes, this is not the rule; and there is perhaps no better remedy for that species of folly than the rigid enforcement of the principle of the fourth section. Such competition introduces a troublesome factor into the making of these transcontinental rates, and we should hesitate to hold that this of itself justified the charging of a higher rate at an intermediate point like San Bernardino.

The competition especially relied upon by the defendants to justify the lower rate at "Pacific Coast Terminals," of which Los Angeles is one, is that by ocean. It has been seen in the statement of facts that such competition absolutely governs the rate upon most commodities between the Atlantic and the Pacific Coast, between New York and San Francisco; but it was also seen that rates to Los Angeles by water are higher to San Francisco; that Los Angeles itself is not a seaport, although the rate to that city is lower than to Port Los Angeles through which ocean traffic moves to Los Angeles itself. Can this be right? Admitting the force of ocean competition at San Francisco, does that competition justify the same rate at Los Angeles? Is not the giving of that rate an undue preference in favor of that community?

The reason for this action of the carriers seems to be found in local traffic conditions in southern California. If the rate

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to San Francisco is less than that to Los Angeles the San Francisco jobber sells in southern California; and merchandise used in that territory is brought to San Francisco and from thence distributed. But water competition is most active at San Francisco and whatever is brought there by rail must be in the face of such competition, while the distribution itself from that point would also be to a considerable extent by water. Until recently the Santa Fé had no line of its own from San Francisco into Southern California and could therefore share to but a limited extent in the benefit of this distribution from San Francisco. Plainly, therefore, the interest of the Southern Pacific and especially of the Santa Fé demanded that some point in Southern California should be given such a rate that merchandise from the east could be brought there all-rail and from thence distributed. The result of these and other considerations was that the transcontinental lines agreed among themselves to make Los Angeles a "terminal point," giving it the same rate as San Francisco; and the real question for us upon the whole situation is, was that agreement among the carriers justified.

Logically speaking, the answer to this question should perhaps be in the negative. Carriers may recognize natural advantages but ordinarily they must not create artificial advantages. If Los Angeles were a seaport it would clearly be entitled to the ocean rate; but it is not, and in a sense these carriers have no right to select a town twenty miles from the ocean and give to that the water rate when they refuse such rate to another community twenty miles farther inland. These traffic questions cannot, however, be decided upon any exact rule or formula and we are disposed to hold that, as a practical solution of a problem filled with embarrassment to the carriers from every standpoint, the giving of the San Francisco rate to Los Angeles was justifiable. Los Angeles is not in fact a seaport, but we think that under all the circumstances it may properly be treated as such in the adjustment of these rates, although in so holding no opinion is expressed as to the propriety of naming a higher rate to a point like Port Los Angeles.

In coming to this conclusion we have been largely influenced by the consideration that while this action upon the part of the

carriers has certainly worked a preference in favor of Los Angeles as against towns like San Bernardino, it has at the same time benefited southern California as a whole. The result has been to transfer the wholesale business of southern California, in so far as it is transacted upon the Pacific Slope, mainly from San Francisco to Los Angeles. Before Los Angeles enjoyed this rate San Francisco jobbers covered that territory. Now they have given place to the jobbers of Los Angeles and in many instances San Francisco houses have established branches at Los Angeles. It is probable that this arrangement results in somewhat cheaper prices for southern California than would be secured by a distribution from San Francisco, since the cost at the two centers of distribution is now the same while the expense of distributing from Los Angeles is somewhat less.

While, therefore, Los Angeles has been benefited it would appear that this whole section shares to an extent in such benefit, nor is it easy to perceive how San Bernardino has been materially injured, since that city could not become a jobbing center as against San Francisco under original conditions. This would be no excuse for these railroads if they were voluntarily preferring Los Angeles to San Bernardino, but it must be considered when the force to which they yield is one beyond their control. The Los Angeles rate may be somewhat lower than actual water competition compels, but the general situation out of which that rate grows is entirely beyond the power of these carriers to limit.

We hold, then, that circumstances and conditions are substantially different at Los Angeles than at San Bernardino in so far as water competition controls the rate at Los Angeles and further that the effect of water competition at San Francisco is properly recognized at Los Angeles by giving to the latter city the same rate as the former.

Upon this holding two points remain for consideration.

First, the complainant insisted that whatever effect water transportation might have upon the rates on commodities in general it could have none upon those on carriages and other vehicles for the reason that these articles could not be and were not transported by water, and introduced testimony tending to

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support this contention of fact. The defendant produced no evidence upon that subject but claimed as a matter of law that if water competition controlled rates in general at Los Angeles, a single commodity should not be selected and treated differently from others because that particular commodity was not so transported.

However that might be in general, we should hardly sustain this contention of the defendant with respect to the particular rate under consideration. West-bound transcontinental tariffs name a great number of commodity rates, the tariff now in effect providing for more than 2,600 such rates. The rate on buggies and carriages is itself a commodity rate. If in point of fact these articles could not be and were not transported by water to Los Angeles we see no reason why that fact should not be shown as rebutting the idea that the specific rate complained of was controlled by water competition.

The testimony of the complainant tended to show that such was the case but that testimony was extremely meager and unsatisfactory, and nothing whatever had been shown by the defendant upon that point. It was mainly in this view that the case was reopened for the taking of further testimony, since the Commission felt that it would profit nobody to make an order upon a misapprehension of the actual facts. The record is still unsatisfactory in this respect but on the whole it hardly supports the claim of the complainant. Carriages can be and are transported without injury over long ocean voyages. Formerly they were habitually carried by water from the Atlantic sea-board to the Pacific Coast. Recently the vehicles used upon the Pacific Coast have been manufactured in the middle west and transported from there by rail. Now, however, eastern manufacturers appear to be once more attempting to enter these markets. The representative of the American-Hawaiian Line testified that the next ship of that line would carry carriages and carriage material shipped from the vicinity of Watertown, N. Y., and other eastern points and that he was negotiating for further shipments by eastern manufacturers. The rate as stated by him is just about one-half the rail rate and it appears that the length of time required for the water transit is not an objec-

tion at all seasons of the year at least, since buggies are best bought in the fall for the California market but are not generally sold until spring. Under these circumstances it can hardly be said that vehicles constitute an exception to the general rule. There is to-day actual competition in the transportation of such articles by water; that competition is likely to become more active in the future; and the rate is such that it must clearly influence all-rail tariffs.

Second, the difference in rate between San Bernardino and Los Angeles is now the full local tariff. In consideration of the fact that these two cities are in competition ought not this difference to be something less than the local rate? This would be in analogy to the holding of the Commission in the *Danville Case*, 8 I. C. C. Rep. 409, 571, the *Hampton Case*, 8 I. C. C. Rep. 503, and some others. As these rates are now adjusted the competition of markets in the middle west is recognized. The competition of transcontinental rail lines is recognized. The competition between Los Angeles and San Francisco is recognized, but no account is made of the desire to compete upon the part of San Bernardino. Should not that element be considered?

This case differs materially from those above cited in that the situation out of which this scheme of rates arose is not one which the carriers have themselves created or over which they have any control. Ocean competition between the Atlantic and Pacific coast is a fundamental fact which these defendants must meet but which they cannot extinguish or modify. Assuming that Los Angeles is a seaport, and we have held that it may properly be treated as such, and that San Bernardino is not, these rates merely give to Los Angeles the legitimate effect of its geographical position.

A further distinction between some of the cases above referred to and the one now before us is found in the fact that in those cases traffic could and did move to the non-competitive point via the competitive point upon through bills of lading and without transshipment. We held that in such case the carrier leading from the competitive to the non-competitive point did not in transporting such through business perform a local service and that this must be recognized in fixing the non-competitive rate.

tive rate. Now, in case of these Pacific coast seaports there is no element of that kind. Traffic coming to such ports by water and taken up there for interior points is in every sense local traffic involving the entire expense of a local shipment. The whole situation upon the Pacific coast, the method of distribution, the circumstances of transportation, all conditions, both commercial and traffic, are entirely different from those in any other territory which we have had occasion to examine.

We do not, however, base our decision upon these points of difference nor do we affirmatively decide that the San Bernardino rate as now constructed is a proper one. We do feel constrained to hold that we cannot upon the record before us determine that it is improper.

We are considering the rate upon a single commodity, but whatever rule is applied to that commodity must apparently obtain as to all others. San Bernardino is only one interior point, but we must be prepared to extend the principle of our decision to all other interior points. This might occasion a reduction in rates to many corresponding points and a very material decrease in the net revenues of the carriers interested. We have absolutely no information as to the amount of traffic which would be involved or as to the extent of the reduction in the revenues of the railways interested, and but a limited acquaintance with traffic conditions prevailing in that locality. In the absence of more complete information we cannot even determine that the present rate is wrong much less suggest what rate would be right.

We have arrived at this conclusion with reluctance. San Bernardino, like every other interior point, is certainly at a disadvantage in comparison with these Pacific Coast terminals; but from the best consideration we have been able to give the facts as developed in this and other similar cases before the Commission, that discrimination seems to arise rather from geographical and commercial conditions than from the voluntary action of the railway carriers. Whether that discrimination is too great and therefore unjust cannot be determined upon this record, and the complaint must therefore be dismissed. It should be noticed that the inherent reasonableness of the San Bernardi-

no rate has not been considered. That question was raised by the pleadings but was not before us upon the evidence.

On April 8th, after the foregoing opinion had been prepared, the Supreme Court of the United States handed down a decision in *East Tennessee, Virginia & Georgia Railway Company et al. v. Interstate Commerce Commission*, commonly known as the *Chattanooga Case*, in which the construction of the third and fourth sections was discussed. Without inquiring as to the exact bearing of that opinion upon the case before us, it certainly strongly sanctions the conclusion of the Commission and strongly indicates that no other disposition of the matter could have been made upon the facts as found.

CLEMENTS, *Commissioner*, dissenting:

I am not able to concur in the conclusions of the majority of the Commission for the following reasons:

While Los Angeles is treated as if at the water and given the San Francisco rate from the east, which is controlled by water competition largely, though the former is about 20 miles from the water, San Bernardino not only receives no such treatment, but though being 60 miles nearer the middle west points of shipment than Los Angeles, it is treated in rate-making substantially as if it were 60 miles farther away than Los Angeles. Thus, while Los Angeles is given a decided advantage by reason of being nearer to the water on the one hand, San Bernardino receives no advantage by reason of being nearer the points of shipment from the middle west.

One of the most potent causes of the passage of the interstate commerce law was the discriminations in favor of the long haul points as against the shorter ones, as set out in the fourth section of the Act. The rates from the middle west as well as from the east to San Bernardino are, generally speaking, made up of the combination of the through rate to Los Angeles plus the local from Los Angeles back to San Bernardino. When this is not so and a joint through rate is applied to San Bernardino direct, it is created substantially on the same basis as the combination rate is. It follows that rates thus made include the established charge, first, for the haul to Los Angeles, including two terminal
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services, one at the point of shipment, and the other at Los Angeles; and, second, for the local haul from Los Angeles back to San Bernardino, including two terminal services, the one at Los Angeles and the other at San Bernardino; whereas in fact there is but the one haul, not two, and two terminal services, not four. True, it has been held that competition may justify deviation from the so-called rule of the fourth section, even in case of carriers subject to the law, and in the face of association agreements between competitive carriers whereby they have by concurrent or joint action established a so-called competitive rate at one junction point and withheld it from another; still it has not been held that the Commission is without power in every such case to condemn excessive, unjust and unreasonable disparity of rates where found. For my own part, I believe that the greater charge for the shorter haul, when the difference is material, is seldom justified to the extent of the full local from the longer distance point back, because, first, it is the application of a high mileage rate for a strictly local haul and terminal services not performed, and which is constructed for a totally different and relatively more expensive service than that which is performed; and, second, because such excess usually results in rates unreasonably high to the shorter distance point or unduly prejudicial against it as between the two, or both. This I believe to be the result in this case.

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PALMER'S DOCK HAY AND PRODUCE BOARD OF
TRADE

v.

PENNSYLVANIA RAILROAD COMPANY.

Decided April 26, 1901.

1. Defendant, a common carrier of interstate commerce, is not in every case under legal compulsion to furnish the same terminal facilities for all descriptions of traffic; it is sufficient if reasonable provision is made in this regard, and what is reasonable in a given instance depends largely upon the conditions and surroundings of the particular locality.
2. Transportation between defendant's terminal in Brooklyn and its rail terminus in Jersey City is effected by water carriage across New York Harbor. The action of defendant in discontinuing "track delivery" for hay in carloads at its station in Brooklyn, though it continued to make such delivery for other carload traffic, was taken to relieve a state of chronic congestion at that station resulting largely from consignments of hay thereto. It still continues delivering carload hay alongside wharves in Brooklyn as it does at other points within the lighterage district of New York. *Held*, That the resulting discrimination against hay in carloads was not "unjust" within the meaning of the Act to regulate commerce, and as no violation of the regulating statute is shown the complaint should be dismissed.

Frank Gardner for complainant.

George V. Massey for defendant.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman*:

The charge of unlawful conduct in this case is based upon the refusal of the defendant carrier to continue the delivery of hay in carload shipments at its freight station in the borough (formerly city) of Brooklyn, N. Y., after making such delivery for
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a period of years. The nature of the question presented will more fully appear from the following statement of facts disclosed at the hearing.

The complainant is an unincorporated association composed of seven members who are severally dealers in hay having places of business in the vicinity of the defendant's freight station in said borough of Brooklyn.

The defendant company is a common carrier engaged in interstate commerce and as such subject to the provisions of the Act to regulate. The rail commerce lines of this company, so far as involved in the present case, terminate at Jersey City, N. J. Brooklyn is situated on Long Island, and transportation to and from the defendant's terminal in that borough is effected by water carriage across the harbor of New York.

Prior to 1888 the defendant had no public freight station in Brooklyn, but in March of that year such a station was established at the foot of North 4th and North 5th streets, where it has since been maintained. For a number of years all classes of freight, except coal and merchandise of a highly inflammable or offensive character, were delivered at this station, and the members of the complaining association had the benefit of such delivery for hay purchased by them at various western points and transported to Brooklyn by the defendant company.

The method of delivery was this: The loaded cars on reaching Jersey City were transferred to lighters or "floats," which were towed across the harbor to Brooklyn, and from which the cars were again transferred to the tracks of the defendant's terminal and placed in proper position for unloading. This constitutes what is called "track delivery."

About the middle of October, 1897, the defendant discontinued the delivery of carload hay in the manner described at its Brooklyn station, and has refused since that time to make such delivery. It has, however, all the while made and now makes track delivery there of other carload merchandise, the article of hay being the only one in respect of which the practice has been changed. At the time this action was taken the defendant's agents at various shipping points were notified that carload hay would no longer be received for Brooklyn delivery,

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and similar notice was given verbally, as the Brooklyn agent testified, to the members of the complaining association. There were then, it appears, a number of carloads of hay, which had been consigned to these dealers, awaiting transfer from the New Jersey side of the harbor, and the order discontinuing the delivery of hay at the Brooklyn station seems to have applied to such shipments. An allegation to this effect is contained in the complaint. But whatever immediate or special damage resulted at the time is now unimportant, as the complainant states that the object of this proceeding is not to secure reparation for particular losses but to obtain a ruling by the Commission that this refusal to deliver carload hay in Brooklyn is unlawful.

In connection with this it may be mentioned that the defendant, although refusing to make track delivery of hay at its Brooklyn terminal, continues to deliver this commodity, or offers to deliver it, by lighter "alongside" at any point within the lighterage district of New York, and is bound to do so under its published regulations. This would include delivery alongside of Palmer's Dock if such service should be requested. We infer, however, that delivery cannot in fact be made alongside the defendant's own dock in Brooklyn, as its water front is entirely occupied by bulkheads for floats or for bridges. It further appears that the defendant makes track delivery of hay at all Brooklyn stations of the Long Island Railroad, which is understood to be leased to or otherwise controlled by the defendant company. No other roads reaching the city of New York or its vicinity have or maintain a public freight station in the borough of Brooklyn. Other western lines, it seems, make track delivery of hay at Palmer's Dock, but this is done only by floats belonging to or operated by the Palmer's Dock Company. Except as above stated all carload hay moving from western points to Brooklyn, whether transported by the defendant or by other carriers, is delivered alongside within the lighterage district of the harbor.

The defendant's justification for refusing to continue the delivery of carload hay at its Brooklyn station appears from allegations in its answer and proofs at the hearing to the following effect. The area of this terminal is quite limited. Its workable capacity is about 65 cars. Taking into account the

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usual delays in unloading, the average practicable delivery is about 30 cars a day. The ownership and uses of adjoining property are such that this area cannot apparently be enlarged. On one side is Palmer's Dock or property connected therewith, and the other adjacent property is mainly owned by the American Sugar Refining Company. These proprietors will not part with their holdings. While no actual effort has been made to buy additional land, it is evident from the business carried on by the surrounding owners and the nature of their occupation, so the defendant claims, that any attempt to purchase would be altogether useless. Nor can this land be acquired by condemnation for the reason, as we understand, that the defendant as regards the State of New York is a foreign corporation and cannot exercise the right of eminent domain within that state.

When this Brooklyn station was opened in 1888 it seems to have been fairly sufficient for the traffic needs then existing, and accordingly all classes of suitable freight were delivered at that terminal for upwards of nine years as above stated. From the first a large portion, possibly one half, of the carload shipments received consisted of hay, as this commodity was quite extensively handled by the complaining parties and other dealers in Brooklyn. The traffic consigned to this station appears to have increased with considerable rapidity and finally much exceeded the capacity of the terminal. Whether the increase of hay shipments during this period was proportionate to that of other articles cannot be determined with certainty, for the evidence on this point is rather indefinite, but it clearly appears that the commodity in question was at all times an important part of the carload movement to Brooklyn.

As a result of this enlarged volume of business the terminal became greatly congested. Loaded cars accumulated on the New Jersey side, where at times as many as 150 cars were held awaiting opportunity for transfer to Brooklyn. It is said that the unloading of hay ordinarily consumed more time than was taken for unloading other merchandise, but this appears to have been owing to the inactivity of consignees rather than anything peculiar to that commodity. This state of partial blockade caused great delay in delivering traffic at this terminal and much embarrassment to the receivers of miscellaneous freight.

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The increased business could not be handled in a satisfactory manner or with proper despatch. For this reason the defendant's managers felt obliged to abandon the delivery of hay at their Brooklyn station, as the exclusion of that article appeared to be the only feasible plan for relieving the situation; and accordingly such action was taken. Even now the terminal is said to be inadequate to the demands of other traffic, as it frequently happens that from 20 to 30 cars are detained for want of room for delivery. These are the circumstances relied upon to excuse refusal to transport carload hay to Brooklyn, and the facts in this regard are found substantially as claimed by the defendant.

There is no proof that the complaining parties located their warehouses or made other investments in reliance upon permanent track delivery of hay at this Brooklyn station, nor does it appear that any special inducements were held out to them in connection with the opening of that station. They were engaged in the hay business before that time, it is said, and they have continued to carry it on notwithstanding the exclusion of hay from this terminal. The defendant now makes, or offers to make, the same delivery for them as for other dealers in hay—that is, delivery alongside within the lighterage district—and they have track delivery of hay at Palmer's Dock which is in the same neighborhood.

There are some hay-producing sections reached only by defendant's lines, and hay from those sources is no longer available for track delivery in Brooklyn. The hay consumed in that market is now mainly carried by other roads, and the defendant in consequence has lost a considerable portion of the hay business which it formerly secured.

CONCLUSIONS.

These facts do not require and scarcely permit extended comment. No question is made that defendant established this Brooklyn station in the honest belief that it would accommodate the traffic for which it was provided. At that time nearly one half the incoming freight consisted of carload hay, and this article continued to be by far the largest single item of traffic

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for Brooklyn delivery. The business seems to have rapidly increased and in a few years much exceeded the capacity of the terminal. A state of chronic congestion was the result. It became impossible to handle the traffic in a suitable manner or with needful despatch. There was great delay in placing cars for unloading, and this occasioned much inconvenience and loss to the receivers of miscellaneous freight. The situation was serious and some measure of relief became a virtual necessity.

Under these circumstances the defendant decided to abandon the delivery of hay at this Brooklyn station, and it is difficult to see what better plan could have been adopted. The facilities of the terminal could not be increased nor its area enlarged. It is quite apparent from the ownership and occupation of adjacent property that additional land could not be procured, for a reasonable sum at least, and the defendant was not bound to attempt a purchase which obviously could not be effected. To apportion the deliveries on some percentage basis, as suggested by complainant's counsel, does not seem to be practicable, nor would that course meet the requirements of general traffic. The large and continuous volume of hay shipments was a potent factor in causing this congested condition, and the exclusion of that commodity permitted other freight to be handled with comparative promptness. It was a feasible method and apparently the one best suited to the emergency.

The complaining parties are not denied any privilege which other Brooklyn hay dealers enjoy. All are treated alike. True, they are deprived of track delivery at the terminal in question, but they have such delivery at Palmer's Dock and can have delivery "alongside" at all points within the lighterage district, for hay shipped over defendant's lines. Their facilities are the same now as before the Brooklyn station was opened, and there is no evidence of material injury to their business because the carriage of hay to that station has been discontinued.

The defendant is not in every case under legal compulsion to furnish the same terminal facilities for all descriptions of traffic. It is sufficient if reasonable provision is made in this regard, and what is reasonable in a given instance depends largely upon the conditions and surroundings of the particular locality. In such circumstances as are here disclosed the needs of the

general public must be considered and the carrier's action adapted to the best practicable discharge of its public obligations. The rule of the greatest good to the greatest number fairly applies. If all cannot be provided with desired facilities, the plan or method adopted should be the one affording the largest public accommodation with the smallest amount of individual hardship. This we think has been done in the case before us. The defendant was entitled to exercise an honest discretion and we see no reason for disapproving the course it has pursued. The resulting discrimination against the article of carload hay was not "unjust" within the meaning of the act; and as no violation of the regulating statute has been shown the complaint should be dismissed.

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THE DALLAS FREIGHT BUREAU *et al.*
v.
THE AUSTIN & NORTHWESTERN RAILROAD COM-
PANY *et al.*

Decided October 19, 1901.

1. Competition, whether it be water competition, railroad competition, or market competition, provided it produces a substantial and material effect upon traffic and rate-making, may create dissimilarity of circumstances and conditions, and such competition must be taken into consideration in cases arising upon complaint under the fourth section. Decisions of U. S. Supreme Court in *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45, and subsequent cases cited and applied.
2. Complainants alleged that higher rates in force from northern and eastern markets to Dallas and Fort Worth than those in effect over lines through those Texas cities to Galveston and Houston violate section four of the statute, but the case was tried upon an erroneous theory that market and railroad competition could not work dissimilarity in the circumstances and conditions within the meaning of the statute. The testimony, which bears solely upon complainants' contention that the statute forbids higher rates on any and all freights for the shorter distance to Dallas or Fort Worth than for the longer distance to Galveston or Houston, was not sufficient to enable the Commission to determine whether the circumstances and conditions governing the transportation in question are or are not substantially similar in respect of all kinds and classes of freight traffic. *Held*, That the complaint must be dismissed, but with leave to complainants to challenge the existing differences in rates as to particular articles or any class of freights by supplemental complaint or in a new proceeding.

Wynne, McCart & Stedman for complainants.

Robert Mather for C. R. I. & P. Ry. Co., C. R. I. & T. Ry. Co. and Evansville & T. H. Ry. Co.

James Hagerman and *Joseph M. Bryson* for Mo., K. & T. Ry. Co., Mo., K. & T. Ry. Co. in Tex. and Sherman, S. & S. Ry. Co.

T. J. Freeman for Tex. & Pac. Ry. Co.

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W. B. Perkins for St. Louis Southwestern Ry. Co., St. Louis Southwestern Ry. Co. of Tex. and Tyler Southeastern Ry. Co.

R. S. Lovett for Houston & Texas Central Ry. Co., Galveston, Harrisburg & San Antonio Ry. Co., Houston, E. & W. Tex. Ry. Co., Tex. & N. O. R. R. Co., Sabine & East Tex. R. R. Co., So. Pac. Co. and Waco & N. W. R. R. Co.

J. W. Terry for A. T. & S. F. Ry. Co. and Gulf, C. & S. F. Ry. Co.

M. A. Spooner for Ft. Worth & Denver City Ry. Co.

J. W. Blythe for C. B. & Q. R. R. Co., Hannibal & St. J. R. R. Co. and K. C., St. J. & Council Bluffs R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman.*

At the hearing of this case, the complainant, the Dallas Freight Bureau, formally withdrew the allegations in its complaint attacking the legality of the blanket rate system, under which the same rates are made from St. Louis, Kansas City, Chicago, New York and other northern and eastern points of shipment to substantially all points within the cultivated portion of the State of Texas.

The remaining paragraphs of the complaint allege that traffic carried by defendants from northern and eastern points outside of Texas to Dallas is charged higher rates than are accepted on like traffic shipped from the same points and transported through or by Dallas to Houston and Galveston, situated, respectively, 265 and 315 miles south of Dallas; and that such higher rates to Dallas are in violation of sections three and four of the Act to regulate commerce. This charge in the complaint covers both carload and less than carload rates, but under a further statement or stipulation made at the hearing by counsel for the Dallas Freight Bureau the correction of carload rates only was insisted upon.

The McCord-Collins Commerce Co., and others engaged in business at Fort Worth, Tex., were made parties complainant upon filing a petition of intervention in which they alleged that defendants violate the fourth section of the act by greater

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charges to Fort Worth than for the longer distances to Houston and Galveston.

Although the complaint of the Dallas Freight Bureau, as modified at the hearing, includes alleged violations of section three as well as of section four, that complainant did not undertake to establish a case under the third section. The whole controversy in fact narrowed down to the single question whether defendants' higher rates on carload shipments to Dallas or Fort Worth than to Houston or Galveston are prohibited by the long and short haul clause of the statute.

The carriers operating lines through Dallas or Fort Worth admitted that they make lower carload commodity rates, and some lower carload class rates, to Galveston and Houston than to Fort Worth or Dallas, but claimed that such lower rates were forced by the competition of water routes and by the competition of lines *via* New Orleans; and they introduced testimony to show the existence of such competition and its controlling force upon the rates in question. The Dallas Freight Bureau merely submitted proof showing that it is a voluntary association of merchants doing business in that city. No other testimony was taken on behalf of complainants.

When this case was heard and submitted in 1897, the construction of section four of the act, as announced by the Commission in the Georgia Railroad Commission cases (*Trammell v. Clyde S. S. Co.*) 5 I. C. C. Rep. 324, 4 Inters. Com. Rep. 120, and followed in several other cases, had not been disapproved by the United States Supreme Court. The Commission had held, in substance, that competition of markets, or competition of carriers subject to the act, did not justify departure from the rule of the fourth section, in the absence of an order of relief granted by the Commission under the proviso clause of that section. As the defendant carriers had not applied for an order permitting them to make lower rates to Galveston and Houston than to Dallas and Fort Worth, the complainants were entitled to claim at the time of the hearing that such competition was excluded from consideration in the present proceeding. The correctness of the ruling of the Commission as to the meaning of section four was then, however, the subject of contention in several cases pending in the Federal

courts to enforce orders of the Commission, including the Georgia Railroad Commission cases above mentioned; and this case has been held to await the final decision of the Supreme Court.

In the Alabama Midland case (*Interstate Commerce Commission v. Alabama Midland R. Co.*) 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45, the Supreme Court held adversely to the position taken by the Commission, and decisions of like tenor have since been rendered by that court in the following cases: *Louisville & N. R. Co. v. Behlmer*, 175 U. S. 648, 44 L. ed. 309, 20 Sup. Ct. Rep. 209; *East Tennessee, V. & G. R. Co. v. Interstate Commerce Commission*, 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516, and *Interstate Commerce Commission v. Clyde S. S. Co.* 181 U. S. 29, 45 L. ed. 729, 21 Sup. Ct. Rep. 512. While some doubt existed as to the precise view taken by the Supreme Court in the Alabama Midland case, the later decisions are clear and explicit upon the point in question. The construction of the fourth section, as declared by the Commission in the above cases, is held to be erroneous; and it is now settled that carriers are entitled to take railroad and market competition into account in fixing their rates for longer and shorter distances, without first obtaining from the Commission a relieving order under the proviso clause of that section of the statute. Any competition, therefore, whether it be water competition, railroad competition or market competition, provided it produces a substantial and material effect upon traffic and rate-making, may create dissimilarity of circumstances and conditions; and when such competition is shown it must be taken into consideration by the Commission and the courts in cases arising upon complaint under the fourth section.

The complainants also contended that while the evidence adduced in behalf of defendants shows the possibility of water transportation from St. Louis and other Mississippi River points to New Orleans, and from thence to Galveston and Houston, it does not establish the fact that actual and controlling competition exists by that method of carriage, as between such Mississippi River points and Galveston or Houston, in respect of traffic important in amount; and that this also applies to traffic from Ohio River points. Whatever the fact may be as to the existence of actual and controlling competition by water car-

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riage down the Ohio, Missouri and Mississippi Rivers and the Gulf of Mexico to Galveston and thence to Houston, we are also required to consider, under the decisions of the Supreme Court, the competition of markets and the competition of railroads engaged in carrying freight into Texas. The much broader question is therefore presented for determination: Does actual competition of whatever kind justify the defendant carriers under the fourth section in making lower rates from St. Louis and other northern and eastern points to Galveston and Houston than for the shorter distances to Dallas and Fort Worth?

The defendants are all engaged in the interstate carriage of freight articles to points in Texas. The Missouri, Kansas & Texas and Gulf, Colorado & Santa Fé Railway Companies reach Fort Worth and Dallas and Houston and Galveston. The Houston & Texas Central reaches Fort Worth, Dallas and Houston, and extends north of Dallas to Denison, Tex. The Gulf, Colorado & Santa Fé and Missouri, Kansas & Texas run north of Fort Worth and Dallas, the latter road reaching Kansas City and St. Louis. Other defendant lines connect with these roads at various points and form through routes from St. Louis and other northern and eastern points, and traffic originating at such points and shipped over these routes to Galveston or Houston passes through Fort Worth or Dallas.

The short-line distance from St. Louis to Dallas is 684 miles; from St. Louis to Houston, *via* Dallas, it is 949 miles, and from St. Louis to Galveston, *via* Dallas, 1,000 miles. Houston and Galveston are, therefore, respectively, 265 and 315 miles longer distances as compared with Dallas by such routes. Similar differences in distance exist over lines passing through Fort Worth, which is situated about 33 miles to the west of Dallas. Merchandise destined to Houston or Galveston from Mississippi River or Missouri River points does not necessarily pass through either Dallas or Fort Worth, but a large proportion of such merchandise is actually transported through those cities. The distance from St. Louis to Houston and Galveston over the St. Louis, Iron Mountain & Southern, Texas & Pacific, and International & Great Northern is 819 miles to Houston and 870 miles to Galveston; and this short line does not pass through either Dallas or Fort Worth. Other defendant lines enter the

State of Texas either across its eastern or northern boundary, some *via* Shreveport, La., and some *via* New Orleans and Galveston and Houston.

Dallas and Fort Worth are situated in the northern central part of Texas and their combined population is about 70,000. They have rail and rail and water communication with all points mentioned in the complaint, but no all-water communication.

Galveston is situated on an island between the Gulf of Mexico and Galveston Bay. It was settled in 1838, and for many years has been an important port of entry. It is connected by rail and by rail and water with all the points mentioned in the complaint, by water with Gulf of Mexico and Atlantic Seaboard points, and with points reached by the Mississippi, Missouri and Ohio Rivers.

Houston is situated in Texas about 50 miles north of Galveston, with which it is connected by rail, and by water *via* the Buffalo Bayou. It is also connected with Velasco, a point on the Gulf of Mexico a short distance southwesterly of Galveston, by rail and the Buffalo Bayou. The transportation facilities of Houston are similar to those of Galveston, except that Buffalo Bayou cannot be navigated by the larger-sized steam vessels. It appears, however, that until rail rates were sufficiently reduced shippers used this waterway to a considerable extent in the transportation of freight articles between Houston and the Gulf of Mexico, and that it is still frequently employed for that purpose. Cotton exported through the port of Galveston is carried in large quantities *via* Buffalo Bayou. The combined population of Galveston and Houston is about 80,000.

The rates to substantially all of the cultivated portion of Texas, from points on and east of the Missouri and Mississippi Rivers, have primarily resulted from and are mainly controlled by competition, and such competition has contributed to make rates the same to all Texas points within a vast area, reaching from the northern and eastern boundaries of the State to the Gulf of Mexico as far southwest as the vicinity of Corpus Christi. This territory is known as Texas common-point territory. Generally speaking, the common-point rates from St. Louis are determined by adding to rates fixed by the Texas Railroad Commission certain arbitraries. These Texas Commission rates apply for 1859 I. C. C. REP.

miles or more from Houston in all directions. Such rates from Galveston range from 95 cents per 100 pounds first class to 52 cents fifth class, and from 56 cents class A to 20 cents on class E. To these rates the carriers from St. Louis add arbitraries amounting to from 35 cents first class down to 16 cents on class E; and this results in class rates of \$1.30 first class, 36 cents class E, and various intermediate amounts on the other classes. The class rates from St. Louis to Texas common points also apply to Galveston and Houston, except on classes A, B and C, which are lower to those cities by 4 cents on class A, 5 cents on class B, and 2 cents on class C. Numerous lower commodity rates are in force to Galveston and Houston, and there are also some commodity rates lower than the class rates in effect to Dallas, Fort Worth and other Texas common points. The lower rates to Galveston and Houston than to Dallas and Fort Worth are A, B and C class rates and commodity rates. While some changes have taken place in the last four years, the present rates and rate relations are not greatly different from those disclosed at the hearing.

The rates to Galveston and Houston, Dallas, Fort Worth and other Texas common points, both class and commodity, are adjusted upon a differential basis from St. Louis, Kansas City and points east of the Missouri and Mississippi Rivers. These rates apply from all points in described territories, which are known as St. Louis, Kansas City, Omaha-Davenport, Memphis, New Orleans, Nashville, Louisville, Chicago-Cincinnati, Milwaukee, Fox River, Detroit-Cleveland, Dayton-South Bend, Middleborough, Pittsburg, Macon and Carolina territories. The rates from such territories other than St. Louis territory are certain differentials above or below those from St. Louis. The differential rates from these territories have been the subject of agreement, arbitration and adjustment between the carriers from time to time. Such rate adjustment was in effect for several years prior to the hearing of this case and is based upon the rates to and from New Orleans. It is testified that the class tariffs to Houston and Galveston are made by combination on New Orleans, and that the commodity rates to those cities are made in a similar manner, using the rates from producing points to New Orleans with a differential above or below

the St. Louis rate plus the rail rate from New Orleans. The application of the differential is explained in this way: The rates on iron, for example, are based upon Pittsburg. The local rate to New Orleans was 26 cents, and the rate from New Orleans to Houston or Galveston was 25 cents, making a total from Pittsburg of 51 cents. The fifth class differential as between St. Louis and Pittsburg was 20 cents, and this deducted from 51 leaves 31 cents, which was the rate from St. Louis to Galveston or Houston. It was also testified at the hearing that the common point or class rate is applied to Galveston or Houston in all cases except where a less rate is made by combination on New Orleans. The rate to Dallas and Fort Worth is always less than the combination of rates on Galveston or Houston. Examination of the present tariffs does not warrant a finding that rates generally to Galveston and Houston are now made by combination upon New Orleans. They appear in most cases to be less than such combination, and while we are not definitely advised upon what basis they are actually constructed, it seems evident that the present rates result from competition of the numerous supply markets located in the territories above described and along the Atlantic Seaboard.

While it does not appear from the record that shipments from St. Louis and other Mississippi River points to Galveston or Houston are carried through by all water lines, or that traffic brought down the river to New Orleans was at the time of the hearing transshipped there and carried by Gulf vessels to Galveston or Houston, it is shown that this may be done and that it has been done. Steamers ply regularly between St. Louis and other river points and New Orleans, and others are used for traffic coming down the Ohio and Mississippi from time to time. This competition has a substantial and material effect upon railroad rates from those points to New Orleans. The testimony indicates that steamer service between New Orleans and Galveston could be secured at the time of the hearing at a rate of about 14 cents per 100 pounds.

The rates by rail from New Orleans to Galveston or Houston are made with reference to the practicability of water competition by the Gulf. An attempt made by the Southern Pacific to maintain an advance in rates from New Orleans was frustrated. 9 I. C. C. REP.

trated by the expressed determination of shippers in that city to put on a steamer line to Galveston if the rates were not reduced. The testimony also discloses that Kansas City shippers provided and kept on hand a sum of money sufficient to establish a line of boats to New Orleans in the event of any considerable advance in rates by railroad lines between those points, and that at one time such a line was in operation.

Much of the traffic shipped from points east of Pittsburg to Texas destinations goes *via* Galveston. The Southern Pacific operates a line of steamships between New York and New Orleans. The Cromwell Steamship Line also plies between the same points. The Mallory Steamship Line runs regularly between New York and Galveston. These steamer rates were on a basis of 80 cents first class between New York and Galveston at the time of the hearing, and considerably lower than rates by all rail lines. Schooners may be, and from time to time are, chartered to carry traffic at much lower rates from Atlantic Seaboard points to points in Texas. One schooner of 700 tons burthen, it was shown in testimony, had lately been loaded with canned goods from Baltimore to Houston at a rate, including insurance, of about 23 cents. The rate of the Mallory and Southern Pacific Lines on canned goods to Houston was 38 cents. The same shipper, a wholesale grocer, was about closing an arrangement for another cargo by schooner from Baltimore to Galveston or Velasco at 15 cents per 100 pounds, to which 2 cents insurance would be added. A schooner line was running regularly at the time of hearing between New York and Velasco, on which a rate of 25 cents for all classes could be obtained.

Under the conditions above indicated, it is quite evident that rail rates from St. Louis, Kansas City and points east to Galveston and Houston are controlled by carriers' and market competition, and that the purchase of merchandise by Galveston or Houston merchants at St. Louis, Chicago and other points in the Central West is materially affected by the transportation rates obtainable on like merchandise from Atlantic Seaboard points and places in adjacent territory. The rates to Dallas and Fort Worth are also controlled by carriers' and market competition, but such competition may operate with greater force at Galveston and Houston to the extent of justifying lower rates to those

cities on traffic thereby affected. The testimony given bears solely upon the contention that the statute forbids higher rates upon any and all freights to Dallas and Fort Worth, *via* lines through those cities, than are granted to Galveston and Houston. We are unable to find, upon such proofs as have been made, whether the circumstances and conditions are or are not substantially similar in respect of all kinds and classes of freight traffic destined to these inland and Gulf cities. This was the general question in dispute, and the complaint must therefore be dismissed.

It is not improbable that some and perhaps a great many commodities take rates by rail to Galveston and Houston which, as compared with the higher rates on the same articles to Dallas and Fort Worth, result in disparities not justified by actual differences in circumstances and conditions, but that phase of the situation has not been investigated. Whether the existing differences in rates are excessive or unreasonable, or not warranted at all in particular instances or in regard to any class of freights, is an issue to which the proofs were not directed, and the facts so far disclosed are insufficient to warrant its determination. Further inquiry in this regard may be invoked, either by supplemental complaint or by a new proceeding, and such inquiry will not be precluded by the ruling made in this report.

9 I. C. C. REP.

NATHAN MYER

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS.
RAILWAY COMPANY *et al.*

Decided November 27, 1901.

1. Manifestly, in determining what freight rate shall be borne by different commodities an attempt should be made to maintain a fair relation between those commodities, and a classification which utterly ignores all considerations of this kind or which utterly fails to give due weight to such considerations is unjust and unreasonable.
2. Hatters' furs and fur scraps and cuttings are offered for transportation in packages not bulky, but of convenient size, their value is not great, they are not liable to be lost or damaged in transit, and the first class of the "Official Classification" enforced by defendants contains hardly any article so desirable for traffic as they are, yet these commodities are classified double first class by the defendant carriers. For manufacturing purposes these raw materials are competitive with hats, the finished product. Complainant, located at Wabash, Ind., is the only manufacturer of hats west of Atlantic Seaboard territory, most of his competitors being located in the vicinity of New York, from whence supplies of hatters' furs and fur scraps and cuttings are almost entirely drawn. The difference in freight rates operates to damage complainant in his competition in western territory with the eastern manufacturers to the extent of about one thousand dollars per year. *Held*, That hatters' furs and fur scraps and cuttings as compared with articles taking first class rates in defendants' classification, including hats, the finished product for which these commodities constitute raw material, are unlawfully made double first class and cannot lawfully be classed higher than first class in such classification.
3. An order of the Commission requiring a carrier to cease and desist from enforcing a classification of specified articles higher than the classification which upon the facts it has found to be lawful is not prescribing a rate for the future. Classification determines the relation of rates as between commodities, not the rate itself, and when a commodity is transferred from a higher to a lower class the revenues of the carrier are not necessarily diminished since it may advance the rates applicable to those classes.

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P. J. Farrell for complainant.

J. J. Brooks for Pennsylvania Lines.

C. E. Gill for Wabash R. R. Co. and Delaware, Lackawanna & Western R. R. Co.

F. J. Jerome for Lake Shore & Michigan Southern Ry. Co.

REPORT AND OPINION.

PROUTY, *Commissioner*:

The complainant is engaged in the manufacture of hats under the title of the Pioneer Hat Works at Wabash, Indiana, and his complaint is that "hatters' furs" and "fur scraps and cuttings" are wrongly classified, the present classification of both these commodities being double first class, while he insists that hatters' furs should be classified as first class and fur scraps and cuttings as second class. No question is made as to the competency of the complainant to maintain this proceeding, nor as to the jurisdiction of the Commission over the defendants.

Hatters' furs is a trade name applicable to the various kinds of fur used in the manufacture of hats. These furs, as sold to the manufacturer and presented for transportation, are sheared from the skin, and packed in paper bags containing three or five pounds each, which are then assembled in wooden cases, 100 bags to the case. The case thus weighs from three to five hundred pounds and is in size about 36" x 36" x 40," containing some 30 cu. ft.

Considerable testimony was given as to the value of these furs and price lists covering some fourteen years previous to the hearing were introduced. It appears that many different kinds of fur are comprehended under this title and that the different kinds vary greatly in price.

The complainant testified that rabbit fur was the sort mostly used by him in the manufacture of hats, although he used to some extent nutria, and that the value of the furs which he used was from \$.40 to \$2.50 per pound. The complainant makes a medium grade of fur hats. More of the higher priced furs would probably enter into the manufacture of hats of a higher grade. These furs, nutria and beaver, average in price as high

9 I. C. C. REP.

as \$6 per pound, and the price lists show that the best grade of beaver has at times listed at \$15 per pound; but it is fairly inferable from the testimony that rabbit fur is the kind mainly used in the manufacture of fur hats of all grades, the more expensive sorts of fur being used only in comparatively small quantities. The testimony is not sufficiently definite to justify an exact finding, but we think it fairly appears, and find, that the average value of hatters' furs would be from \$1 to \$2 per pound, the great bulk of that commodity presented for transportation being within these limits.

The term fur scraps and cuttings seems to include the waste produced in working up fur pelts for various purposes. It embraces not only the waste from the preparation of hatters' furs but also the pieces which are left in the manufacture of fur garments. These fur scraps are purchased by fur brokers, by whom they are assorted into different grades and sold to different persons for various uses at widely different prices. The complainant testified that the fur scraps and cuttings used in the manufacture of hats were worth from 21½ to 40 cents per pound. The pieces of fur which would also be embraced under the same title are often worth much more than this, sometimes as high as \$1.50 per pound.

It is extremely difficult to fix any fair average value, but we are inclined to think that the great bulk of fur scraps and cuttings offered for transportation could not exceed in value 50 cents per pound, and that the average would not equal this. Fur scraps and cuttings are transported in cases, bags or bales weighing from 450 to 500 pounds. The proportion between bulk and weight is about the same as with hatters' furs.

Manufactured hats are classified first class and the complainant insisted that this was a discrimination against the raw material.

Upon this point testimony was given by both parties as to comparative value and desirability from a traffic standpoint of the raw material and the finished product.

Hatters' furs are put through three processes in preparation for use in the manufacture of hats and shrink about two ounces in the pound. Fur scraps and cuttings pass through from

twelve to eighteen processes and only from 10 to 33 $\frac{1}{3}$ per cent in weight of usable fur is obtained. In the manufacture of the itself the average is still further shrunk.

Hats are shipped in cases weighing about sixty pounds to the case and are from two to three times more bulky than hatters' furs or fur scraps and cuttings. The complainant also insisted that they were much more valuable by the pound. This was denied by the defendants who claimed that the average value of all hats was less by the pound than the average value of hatters' furs.

Hats other than straw are sometimes made of other material besides fur, but the complainant testified that the proportion of fur hats to other hats would be fifty to one. Caps are made of cloth. The average value of fur hats per pound must greatly exceed the average value of the hatters' furs which enter into their construction, and without doubt this is true of all hats other than straw. It would be unprofitable to hazard a guess as to whether this might or might not be the case if straw hats were included.

The complainant further insisted that hatters' furs and fur scraps and cuttings were a more desirable kind of traffic than hats and caps for the reason that they were less liable to loss or damage in transit. From the very nature of the articles it is almost impossible that hatters' furs or fur scraps and cuttings should be stolen. They are not combustible and not easily injured by water or by jamming; and any injury from these causes would be confined to what was actually injured. Upon the contrary a hat is ready to wear and this is an inducement to abstract one from a case. Injury to a small part of a hat spoils the entire article. The complainant testified that in the whole course of his business he had never made a claim for damage to hatters' furs or fur scraps in transit while he had frequently had occasion to do so in case of hats.

The complainant is the only manufacturer of hats located in the West. All his competitors are upon the Atlantic seaboard in near proximity to New York. Most of these hatters' furs are imported and are distributed from the port of New York. The complainant claims that by reason of the higher rate upon

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raw material than upon the manufactured product he is placed at a disadvantage in comparison with the eastern manufacturer.

The market of the complainant is the whole United States west of Pittsburg and in all that territory he competes with the eastern manufacturer. The exact points in the East at which these competitors are located did not appear, and it is not therefore possible to make any exact comparison of rates; but generally speaking the rate from these eastern points is that of Boston or New York. There is considerable territory, like the Pacific Coast, to which rates upon hats are the same from the Atlantic seaboard as from Wabash, and in nearly all territory the sum of the rates, upon the same class, from New York to Wabash and from Wabash to the point of consumption is considerably greater than the rate from New York to the last named destination.

Some question was raised as to the amount of complainant's shipments per year. Mr. Gill, Chairman of the Official Classification Committee, stated that a compilation of these shipments had been made and that they aggregated about 150,000 pounds per year. The rate from New York to Wabash is 72 cents, first class, and \$1.44 double first class. If, therefore, the complainant is right in his contention as to what the correct classification should be he is damaged to the extent of something more than \$1,000 annually upon the statement of the defendants.

The complainant also urged that the classification in question created undue prejudice against his commodities as compared with dry goods, boots and shoes and many other articles classified as first class.

About 250 articles are classified as double first class by the Official Classification. Generally speaking, such articles offer some special reason for the classification, like unusual bulk, extraordinary risk, or something of that nature. An examination of the entire list fails to disclose a single commodity which affords as desirable traffic as the one under consideration, and in only three or four instances is there any approach to this. Something like 1,500 articles are classified as first class. We have examined this list and our conclusion is that but very few of

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them are as desirable freight as hatters' furs and fur scraps and cuttings, and that none of them are more so.

No special reasons were shown why these two commodities should pay a higher rate than other similar commodities.

CONCLUSIONS.

Upon these facts the complainant contends that the present classification of hatters' furs and fur scraps and cuttings is in violation of the Act to regulate commerce. His position is that in the forming of a classification a proper relation between different articles should be preserved and that when these articles under consideration are compared with others analogous from a transportation standpoint it appears that this present classification is too high.

↳ To this the defendant replies that one commodity should not be compared with another unless the two are competitive; hatters' furs cannot therefore be tested by dry-goods or boots and shoes. Mr. Gill, Chairman of the Official Classification Committee, speaking both as a witness and as counsel for the defendants, asserts that the main element in the determination of a classification is "value of service" or "what the traffic will bear."

There is undoubtedly much, we do not find it necessary to now inquire how much, truth in this contention of Mr. Gill; but it cannot be admitted that those are the only considerations to be observed. It has been repeatedly claimed by carriers and repeatedly held by the Commission that in the forming of a classification bulk, value, liability to damage, and similar elements affecting the desirability of the traffic should be considered, and that analogous articles should ordinarily be placed in the same class. *Warner v. New York C. & H. R. R. Co.* 4 I. C. C. Rep. 32, 3 Inters. Com. Rep. 74; *Harvard Co. v. Pennsylvania Co.* 4 I. C. C. Rep. 212, 3 Inters. Com. Rep. 257; *Page v. Delaware, L. & W. R. Co.* 6 I. C. C. Rep. 548. Manifestly in determining what freight rates shall be borne by different commodities an attempt should be made to obtain a fair relation between those commodities, and a classification which utterly ignores all considerations of this kind or which utterly fails to give due weight to such considerations is unjust and unreasonable.)
9 I. C. C. REP.

The present case falls within this rule. Here are two commodities, not bulky, offered for transportation in packages of convenient size, of not great value, and with practically no liability to loss or damage in transit. It has been found that hardly an article among all those in first class is so desirable traffic as they are, and still these commodities are classified as double first class. In our opinion this is unlawful. They should not be classified higher than first class. We should be inclined to say that fur scraps and cuttings must not be rated higher than second class were it not for the claim of the defendants that this would lead to fraud in the billing of furs as fur scraps.

There is another ground upon which the same conclusion must be reached. Mr. Gill himself admits that when two articles are competitive no preference should be shown in the freight rate. Hatters' fur, the raw material, does compete in a way with hats, the finished product, and we do not think that, under the circumstances of this case, the rate upon the raw material ought to be greater than that upon the finished product.

The complainant is located at Wabash, Ind., and is the only manufacturer of hats west of the Atlantic seaboard. Most of his competitors are in the immediate vicinity of New York from whence supplies of hatters' furs and fur scraps and cuttings are almost entirely drawn. For the purpose of noting the effect upon the complainant, let us assume that his competitor is located in New York itself.

The complainant pays upon his raw material double first class, and that raw material shrinks about one-half in process of manufacture. His competitor pays upon the finished product first class or just one-half the rate paid by the complainant upon the raw material. The item of freight, therefore, costs the complainant at his factory three or four times what it costs his competitor in laying down the same hat at that point.

The complainant sells exclusively in territory west of Pittsburg and the defendants urge that he has an advantage over his competitors in freights by reason of closer proximity to the market. But a moment's consideration will show that at points other than Wabash the discrimination is even greater than at the complainant's factory. In some at least of this competitive ter-

ritory rates from the Atlantic seaboard and Wabash are the same, so that the complainant pays freight upon the raw material in addition to the same rate as the eastern manufacturer upon the finished hat. In none of this competitive territory probably is the rate from the east as great as the rate to Wabash plus the rate from Wabash to the point of consumption.

In determining the relative amounts paid upon the raw material and the finished product we have disregarded the weight of the cases. This is somewhat more in the case of hats than hatters' furs, but there is no definite testimony upon this point.

The defendants say that the complainant is the only person who is finding fault with this classification. Were this true, and without apparent reason, it would be no ground for denying him the relief to which he is entitled; but here the reason is sufficiently obvious since the discrimination is to the advantage of every other manufacturer as against the complainant.

Neither is this a case, as the defendants intimate, where the matter is of so slight consequence that it should not be inquired into nor redressed. The law has a maxim that it will not concern itself with trifles and this perhaps ought to be all the more true of traffic conditions where there can be no exact rule; but in the case before us the excess paid by the complainant according to the statement of the defendants amounts to \$1,000 a year, which can hardly be called a trifle to the complainant, however it might be with the defendants. We think the present adjustment between the raw material and the finished product is unjust and unduly prejudicial to the complainant and that this should be corrected.

This Commission has repeatedly exercised the power to order a change in classification. *Reynolds v. Western N. Y. & P. R. Co.* I. C. C. Rep. 393, 1 Inters. Com. Rep. 685; *Hurlburt v. Lake Shore & M. S. R. Co.* 2 I. C. C. Rep. 122, 2 Inters. Com. Rep. 81; *Harvard Co. v. Pennsylvania Co.* 4 I. C. C. Rep. 212, 3 Inters. Com. Rep. 257; *Page v. Delaware, L. & W. R. Co.* 6 I. C. C. Rep. 148, 4 Inters. Com. Rep. 525; and others. In no case, however, has this been done since the decision of *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 896, holding that the 9 I. C. C. REP.

Commission could not prescribe a rate for the future; nor has the effect of that decision upon the right to change a classification been considered. That question has not been suggested in argument in this case, but it has been raised in another case and we have it in mind in disposing of the one before us.

The fixing of a classification determines the relation of rates, not the rate itself. If we transfer these two commodities from double first class to first class, we do not thereby determine the rate under which they shall move in the future. The revenues of the defendants are not necessarily diminished since they may advance rates applicable to these classes. In *Danville v. Southern R. Co.* 8 I. C. C. Rep. 409, the right of determining the relation in rates which should exist between two localities was exercised and the same principle must apply to the relation between two commodities. In that case it was said that the authority was not clear, but having exercised it then, and believing that a plain distinction exists between fixing a rate and determining a relation in rates, we shall continue to do so until the Supreme Court of the United States has held otherwise.

An order will be entered in accordance with the foregoing views.

9 I. C. C. REP.

NATIONAL WHOLESALE LUMBER DEALERS' ASSOCIATION

v.

THE NORFOLK & WESTERN RAILWAY COMPANY;
THE CUMBERLAND VALLEY RAILROAD COMPANY;
THE PENNSYLVANIA RAILROAD COMPANY;
AND THE BALTIMORE & OHIO RAILROAD COMPANY.

Decided December 11, 1901.

Lumber in carloads is shipped from points in West Virginia and southwestern Virginia to New York City over the N. & W. Ry. to Hagerstown, and thence via the P. R. R. to destination, and over the N. & W. to Shenandoah Junction and thence via the B. & O. R. R., under rates made by adding to those of the N. & W. to Hagerstown and Shenandoah Junction a specific or arbitrary of 13 cents per 100 lbs. charged by the Penn. and B. & O., respectively, therefrom. This specific rate was advanced from 12 to 13 cents in 1893, and the N. & W. charges were generally increased in 1899 and 1900 about 1½ cents per 100 lbs. Much lower rates on competing lumber have been and are maintained from neighboring points in the same shipping section to New York by the B. & O. and by the C. & O. Ry. connecting with the B. & O. at Staunton and the P. R. R. at Washington. The N. & W. line is considerably longer than the C. & O. line, but present rates by the N. & W. yield higher rates per ton per mile than those of the C. & O. line. The rates from N. & W. points to Philadelphia, Pa., are 6 cents lower than those for the 90 miles greater distance to New York, while on the C. & O. the difference in favor of Philadelphia against New York is only 2 cents. *Held*, upon all the facts and circumstances, that the through rates complained of are unreasonable and unlawful, and that there should be an aggregate reduction in the through rates of 2½ cents per 100 lbs.

William A. Day and John Jay McKelvey for Complainant.
Ed. Baxter for Norfolk & Western Railway Company.

9 I. C. C. REP.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman*:

It is alleged by the complainant in this case that the Norfolk & Western Railway Company, in connection with the Cumberland Valley, Pennsylvania, and Baltimore & Ohio Companies, maintains through rates on lumber to New York City, from shipping points on its line of railway in the states of Virginia, West Virginia and Ohio, which are unreasonable in and of themselves, and relatively so as compared with the lumber rates of other lines from the same general territory to the same destination; that such unreasonable rates subject the manufacturers and shippers of lumber from these Norfolk & Western localities, and their traffic, to undue and unreasonable prejudice and disadvantage, and give an unfair advantage to lumber dealers who enjoy the lower rates to New York from other points of production; and that by reason thereof the defendants are violating sections one and three of the Act to regulate commerce.

It is also charged that defendants violate section four of the Act by granting lower lumber rates to New York City from Kenova, W. Va., on the line of the Norfolk & Western, than are charged from points on that line east of Kenova and nearer to New York, the transportation from the longer and shorter distance points being under substantially similar circumstances and conditions. The complaint concludes with the usual prayer for relief.

The defendants admit that they are common carriers subject to the Act to regulate commerce, and that they engage in the transportation of lumber from points in the states of Virginia and West Virginia on the line of the Norfolk & Western Railway to New York City and other eastern destinations; but they deny generally the other material allegations of the complaint so far as the same apply to their respective lines.

The facts pertaining to the issues thus presented are found as follows:

FINDINGS OF FACT.

Complainant is an incorporated association, consisting of some 280 manufacturers and shippers of and dealers in lumber.

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who do business almost entirely at points east of Chicago. Its principal office is in the city of New York. One purpose of this association is to procure for its members reasonable, just and equitable transportation rates between shipping and market points.

The Norfolk & Western Railway Company operates a line of railway which extends by one branch from Columbus, Ohio, through Kenova, W. Va., and Gray, W. Va., and by another branch from Norton, Va., through St. Paul, Va., to Bluefield, W. Va.; thence as one line to Roanoke, Va., where it again divides, one branch leading easterly to Norfolk, Va., and the other northeasterly through Shenandoah Junction, W. Va., to Hagerstown, Md. That portion of the line between Bluefield and Norton is called the Clinch Valley Division, the portion between Bluefield and Gray the Pocahontas Division, and the portion between Gray and Kenova the Kenova Division. Also, by its recent purchase of the Cincinnati, Portsmouth & Virginia Railroad, the Norfolk & Western now has direct connection with Cincinnati, Ohio, via Portsmouth, Ohio.

The Cumberland Valley Railroad Company has a line of railway which extends from Winchester, Va., through Hagerstown, Md., to Harrisburg, Pa. This line is controlled by the Pennsylvania Railroad Company.

The Pennsylvania Railroad Company operates many lines of railway, two of which, one from Washington, D. C., through Baltimore, Md., and another from Harrisburg, Pa., meet at Philadelphia, Pa., and extend thence as one line through Jersey City, N. J., to New York City.

The Baltimore & Ohio Railroad Company operates a line of railway which extends from Columbus and points southwest, west and northwest thereof (to and including St. Louis and Chicago) through Shenandoah Junction, Harpers Ferry, Washington and Baltimore to Philadelphia; and thence in connection with the Philadelphia & Reading Railway and the Central Railroad of New Jersey to New York City.

Through lines between shipping points on the Norfolk & Western Railway and New York City are formed as follows: Norfolk & Western Railway to Columbus, and Baltimore & Ohio Railroad, Pennsylvania Railroad, or Cleveland, Cincinnati. I. C. C. REP.

REPORT AND OPINION OF THE COMMISSION.

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9 I. C. C. REP.

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ping point to Kenova. The result of this is that a shipper can obtain a somewhat less rate from stations on the Kenova Division via Kenova and Columbus than via either Shenandoah Junction or Hagerstown; and Mr. Davant states that even when the rate is based on Kenova the shipper may obtain permission to forward his lumber via Shenandoah Junction or Hagerstown, in cases where the proportion of the N. & W. will be 12 cents or more per 100 pounds. The way in which this permission may be obtained is explained, according to the testimony of Mr. Davant, in the tariffs of the N. & W. Co., and is as follows:

"Through rates will apply via the Gateways through which they are made. They may, however, be applied via the other Gateways when so authorized by this office, but in no case can this be done without special authority."

It will be seen that in the foregoing extract no mention is made of the terms upon which the permission referred to may be obtained, and to this extent at least the tariff of the N. & W. Co., as modified by this regulation, fails to comply with the requirements of section 6 of the Act to regulate commerce. Moreover, the effect of this arrangement is to make a lower rate for longer distances from points on the Kenova Division than for shorter distances from points east thereof to New York City.

The N. & W. Ry. reached Kenova in the year 1892. Previous to that time a rate on lumber of 21½ cents per 100 pounds between Kenova and New York City had been established and has ever since been maintained by the Chesapeake & Ohio Ry. Co. It was to meet this rate that the N. & W. established the rate referred to from Kenova to New York City via Columbus.

The 19-cent proportional rate from Kenova is based on the through rate of 21½ cents applying between Lexington, Ky., and New York City, Kenova taking a proportional 2½ cents per 100 pounds under Lexington.

The distance from Kenova to Columbus is 139 miles, from Kenova to Shenandoah Junction 527, and from Kenova to Hagerstown 550. Consequently, when lumber is forwarded from points on the Kenova Division via Columbus, the distance it is hauled by the N. & W. and the revenue that road receives are much less than they would be if the shipment were made via Shenandoah Junction or Hagerstown.

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The Baltimore & Ohio R. R. Co. and the Chesapeake & Ohio Ry. Co. act as initial carriers of lumber from the same general territory in Virginia, West Virginia, Ohio and Kentucky that is served by the N. & W., and the rates of the former two roads are—generally speaking—materially less than those of the latter. The two following tables show distances to New York City from points on the B. & O. and C. & O. lines, and also rates per 100 pounds and rates per ton per mile; and a comparison of these rates with those contained in the table hereinbefore given pertaining to the N. & W. line will illustrate the differences referred to.

TO NEW YORK, N. Y.

Mileage via Balti- more, Md.	From points on the B. & O. R. R. as follows:		Rates per 100 lbs. Oct. 4, 1898.	Rates per 100 lbs. Feb. 15, 1899.	Rates per 100 lbs. Aug. 6, 1900.	Rates per ton per mile.
478.	Grafton,	W. Va.	17.5	17.5	18	.00669
583.	Parkersburg,	" "	18	18	18	.00617
521.	Belington,	" "	18	18	18	.00691

TO NEW YORK, N. Y.

			March 7, 1898.	Jan. 1, 1900.	Jan. 22, 1900.				
	West Va. and Pittsburg Division.		Rates per 100 lbs.	Rates per 100 lbs.	Rates per 100 lbs.	Rates per ton per mile.			
			Other Lum- Oak. ber.	Other Lum- Oak. ber.	Other Lum- Oak. ber.				
575.	Pickens,	W. Va.	18	21.5	29	21.5	18	21.5	.00748
541.	Buckhannon,	" "	"	"	25	"	"	"	.00795
526.	Weston,	" "	"	"	24	"	"	"	.00817
604.	Camden-on-Gauley,	" "	"	"	30	"	"	"	.00712
576.	Centralia,	" "	"	"	29	"	"	"	.00747
569.	Sutton,	" "	"	"	29	"	"	"	.00756
538.	Roanoke,	" "	"	"	25	"	"	"	.00799
514.	Lost Creek,	" "	"	"	22	"	"	"	.00837

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TO NEW YORK, N. Y.

Mileage via Basic, City, Va., from points on C. & O. Ry.	From	Rates per 100 lbs. Lumber.	Rates per ton per mile.
579. Kanawha Falls,	W. Va.		.00742
583. Deep Water,	" "		.00738
615. Charleston,	" "		.00698
626. St. Albans,	" "		.00686
665. Huntington,	" "	21½	.00647
675. Catlettsburg,	Ky.		.00636
681. Ashland,	"		.00631

These rates have been in effect since September 8, 1890, except from Deep Water, which point is not shown in tariff until February 3, 1897.

Complainant also introduced in evidence distances, rates per 100 pounds and rates per ton per mile to New York City from shipping points on railroads other than those above named as follows:

Distance in miles.	Point of shipment.	Rate in cents per 100 lbs.	Rate in frac- tions of a cent per ton per mile.
753	Saginaw, Mich.	21	.00558
843	Muskegon, "	22	.00522
805	Grand Rapids, "	22	.00547
902	Manistee, "	24	.00532
834	Logansport, Ind.	24	.00576
848	Elkhart, "	24	.00566
764	Fort Wayne, "	22½	.00589
825	Indianapolis, "	23	.00558

The foregoing rates from points in Michigan and Indiana have been in effect for several years.

On the other hand, the attorney of the N. & W. invited at-
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tention in his brief and argument to rates prevailing between southern points and New York City as follows:

Distance in miles.	Point of shipment.		Rate in cents per 100 lbs.	Rate in frac- tions of a cent per ton per mile.
848	Chattanooga,	Tenn.	28½	.00672
999	Nashville,	"	28½	.00571
1158	Memphis,	"	31	.00535
631	Johnson City,	"	28½	.00903
678	Big Stone Gap,	Va.	30	.00885
649	Clinchport,	"	29½	.00909
665	Cranberry,	N. C.	33 ⁷ / ₁₀	.01011
728	Marshall,	"	28½	.00783
629	Elizabethtown,	"	28½	.00906

Defendant did not give distances, but in figuring rates per ton per mile short line distances, those most favorable to defendant's contention have been used.

Lumber shipped from points on the N. & W., B. & O. and C. & O. lines is of the same general character, and the rates particularly complained of in this proceeding apply to oak and poplar. There was some testimony to the effect that the grade of poplar lumber produced on the C. & O. line was somewhat higher than that from points on the N. & W., but the witness who so testified did not claim to possess personal knowledge of the matter, and another witness who had dealt in poplar lumber from each road expressed the opinion that there was not much, if any, difference in quality. Therefore, no finding of fact in this regard is attempted.

The evidence although somewhat meager on that point, tended to show that the cost of stumpage and manufacture was about the same on one as another of these lines.

Poplar, oak and ash lumber shipped from these three lines comes into competition in the New York market, but the principal competition appears to be on poplar. There is a species of spruce shipped from points on the B. & O., but no lumber of that kind is produced on the N. & W. Poplar lumber also comes into competition at New York with poplar shipped from western North Carolina, eastern Tennessee and Kentucky. The competition in lumber is severe, and a large proportion of the business is transacted on profits ranging from \$1.00 to \$1.50

per 1000 feet. When shipped, 1000 feet of lumber will weigh on an average, poplar, 3000 pounds, and oak, 4250 pounds. Consequently, an advance of a few cents per 100 pounds in the rates of transportation might render the business unprofitable to a shipper. One dealer, who manufactures lumber at Wilmore on the Pocahontas Division and at Tip Top on the Clinch Valley Division, testified that he began to manufacture at Wilmore about two years ago. At that time the rate from there to New York City was, on oak 24½ cents, and on poplar 26½ cents, per 100 pounds. This rate was increased by the N. & W. July 21, 1899, 1 cent, and February 5, 1900, ½ of a cent, making a total increase of 1½ cents per 100 pounds. During this time the rates from points on the B. & O. and C. & O. lines remained practically unchanged.

Since April 3, 1894, the N. & W. has maintained a differential in rates between oak lumber and other kinds, according to the former a rate generally 2 cents per 100 pounds less than is charged on the latter; but no such distinction is made by the C. & O. While oak is the heavier, there is no difficulty in loading a car with either so as to make in weight a full carload; but cars loaded with oak usually weigh more than those loaded with other kinds. The lower rate on oak is not complained of and there is no evidence that the differential in question is unreasonable, although oak is somewhat more valuable than poplar.

The B. & O. and C. & O. lumber rates are based generally on the rate from Chicago to New York City, which is 25 cents per 100 pounds; Cincinnati taking a 14 per cent differential under Chicago, and no point east of Cincinnati taking a higher rate than that from Cincinnati.

For the year ending June 30, 1899, the earnings of these roads from freight and passenger traffic were as follows:

Name of Road.	Mileage Operated.	Total Earnings.
P. R. R. east of Pittsburg.....	2,847	\$67,119,534
B. & O. R. R.	2,024	28,404,922
C. & O. Ry.....	1,453	12,013,833
N. & W. Ry.....	1,551	11,827,140
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Of these earnings the amount *per mile* received from passenger traffic by each road was:

P. R. R.....	\$6,634
B. & O.	3,565
C. & O.....	1,995
N. & W.....	1,269

Leaving other earnings *per mile*, principally freight earnings:

P. R. R.....	\$16,942
B. & O.....	10,469
C. & O.....	6,273
N. & W.....	6,356

Statistics for the year ending June 30, 1900, were as follows:

Name of Road.	Mileage Operated.	Total Earnings.
P. R. R. east of Pittsburg.....	2,894	\$80,304,332
B. & O.....	2,260	34,890,227
C. & O.....	1,465	13,406,070
N. & W.....	1,555	14,091,005

Of these earnings the amount *per mile* received from passenger traffic by each road was:

P. R. R.....	\$7,280
B. & O.....	3,614
C. & O.....	2,169
N. & W.....	1,436

Leaving other earnings *per mile*, principally freight earnings:

P. R. R.....	\$20,470
B. & O.....	11,826
C. & O.....	6,981
N. & W.....	7,643

The net earnings per mile for this year were:

P. R. R.....	\$9,118
B. & O.....	5,378
C. & O.....	3,134
N. & W.....	3,844

The rate per ton per mile of the C. & O. and N. & W. lines is somewhat less than that of the large majority of other railways in the United States. Defendant's counsel called attention to this fact in his argument, and in that connection said: "The comparison of the average rate per ton per mile suggests that rates on certain articles on both roads are unreasonably low, and should be advanced if it were practicable to do so." He also stated that the principal articles of freight on both lines are coal, coke and minerals, and these are commonly regarded as entitled to very low rates.

Defendant's counsel made further statements in his argument as follows: "They (the C. & O. and N. & W. lines) run in a nearly parallel direction, and from 20 to 80 miles apart, until they intersect at Kenova, 568 miles from Norfolk by the Norfolk & Western Railway. The Chesapeake & Ohio is what is known as a low-grade line. Its maximum grade on its line from Ronceverte, the principal shipping point of lumber on its line, to Newport News via the James River Division, is only 35 feet per mile; and the maximum curvature excepting curvature on the James River line, which is all down grade, is eight degrees. The maximum grade on the Norfolk & Western Railway on the route from St. Paul, the principal shipping point of lumber on that road, both to Hagerstown and Norfolk, is 85 feet per mile, and the maximum curvature is 16 degrees. The sum of the ascents of grades, going east, that is, in the direction of the lumber traffic on the Norfolk & Western Railway is 7,496 feet between St. Paul and Hagerstown, and 4,862 feet between St. Paul and Norfolk. The Chesapeake & Ohio Railway connects the large centers of population in the East with those of the West and Northwest, and in consequence, is enjoying a large through passenger business. The Norfolk & Western line to the West and Northwest is too circuitous and long to enable it to compete for this traffic; and while it has a direct line to the South it can only control this line between Lynchburg and Bristol, or between Hagerstown and Bristol,—being dependent upon the Southern Railway for an outlet to the South. The Southern Railway has several lines of its own to the South, and is therefore the strongest competitor of the Norfolk & Western Railway for through business. The value of

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such passenger business in the South is not very considerable, and it is divided between numerous lines. It (the C. & O. Ry. Co.) can also engage, and does engage, to a considerable extent, in the transportation of grain and products of grain from the West for export; even at the very low rates which generally prevail on this traffic. It also commands, by reason of its western connections, and the fact that it has access with its own rails and by means of its connections to large important commercial cities in the West and Northwest, a larger proportion of the merchandise business from eastern cities than the Norfolk & Western Railway has been able to command. The Chesapeake & Ohio Railway is in direct competition with the Trunk lines in the transportation of lumber, and must necessarily accept the low Trunk Line rates; while the Norfolk & Western Railway, although it necessarily feels the effect of the low Trunk Line rates in competition between markets, is not obliged to make its rates quite as low as those of the Trunk Lines."

There was no direct evidence of the facts respecting grades and curves, but the statement of counsel in that regard is assumed to be correct.

Important cities located on the line of the C. & O. and their population according to the Census of 1900 are as follows:

Name.	Population.
Washington, D. C.	278,718
Newport News, Va.,	19,635
Norfolk, Va.,	46,624
Richmond, Va.,	85,050
Lynchburg, Va.,	18,891
Charleston, W. Va.,	11,099
Huntington, W. Va.,	11,923
Louisville, Ky.,	204,731
Cincinnati, Ohio,	325,902

Those on the line of the N. & W. are:

Norfolk, Va.,	46,624
Richmond, Va.,	85,050
Lynchburg, Va.,	18,891
Roanoke, Va.,	21,495
Bristol, Va., and	
Bristol, Tenn., combined	9,850
Portsmouth, Ohio,	17,870
Columbus, Ohio,	125,560
Cincinnati, Ohio,	325,902

The distance from Cincinnati to New York via the N. & W. and its eastern connections is greater than via the C. & O. and its connections, being 926 miles over the former route and 829 over the latter. This is largely attributable to the fact that the N. & W. extends farther than the C. & O. in a southerly direction.

The N. & W. as compared with the C. & O. is longer and more circuitous between eastern and western points, and that fact appears to constitute its principal difficulty in competing for business between those points.

The following comparison of expenditures may give some indication of the relative cost of operating these two roads. For the year ending June 30, 1899, the mileage operated and total operating expenses were as follows:

Mileage Operated.	Operating Expenses.
N. & W. 1551	\$7,583,247
C. & O. 1453	7,906,337

Showing cost per mile of road:

N. & W.	\$4,889
C. & O.	5,441

For the year ending June 30, 1900, these items were:

Mileage Operated.	Operating Expenses.
N. & W. 1555	\$8,113,168
C. & O. 1465	8,814,343

Showing cost per mile of road:

N. & W.	\$5,217
C. & O.	6,017

This shows that the cost per mile of operating the C. & O. was \$552 for the year ending June 30, 1899, and \$600 for the year ending June 30, 1900, more than the cost of operating the N. & W.

While it is true that the C. & O. and N. & W. lines are generally parallel with and not very widely separated from each other between their eastern termini and Kenova, and that both serve the same general territory in Virginia and West Virginia

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it is also true that by reason of the greater length of the N. & W. line lumber transported from a point in one of those states on the line of the N. & W. to a northeastern destination must be hauled a longer distance than if shipped from a neighboring point on the C. & O. line. Therefore, if rates were measured solely by the length of haul in each instance, and without reference to other circumstances and conditions, they might reasonably be higher to northeastern markets from points in those states on the N. & W. than from neighboring points on the C. & O. The record does not furnish data from which an accurate computation can be made; but, disregarding actual tonnage and confining the inquiry to lumber, the relative rates per ton per mile, as measured by distances and rates now in force, are found to be about as follows:

C. & O.	.835 of a mill
N. & W.	.884 " " "

It is said that lumber shipped from points in Kentucky, the eastern part of Tennessee and the western part of North Carolina comes into competition in the northern and eastern markets with lumber shipped from points on the B. & O., C. & O. and N. & W. lines; and, as pointed out by defendant's counsel the rates of lines which serve that territory are relatively higher, in some instances, than those of the C. & O.

In defense of the lower rates maintained from points on the Kenova Division of the N. & W. Ry. than are charged from shorter distance points east thereof, defendant's counsel said: "The rates on lumber from stations on the Scioto (Kenova) Division to New York are necessarily affected by the low rates based upon Trunk Line rates from Kenova to New York via competing lines. It is obvious that if the Norfolk & Western Railway Company were to charge more from such stations than a combination of its local rates to Kenova and the competitive rates from Kenova to New York, it would lose this traffic for its own line via Hagerstown, and would have to accept the low short-haul local rates from such stations to Kenova, and its proportion of through rates via Columbus,—so that after the expenditure of millions of dollars in the construction of a railroad through a difficult country, the Norfolk & Western Railway

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Company would not get the revenue from the most important traffic next to coal, that originates on its line, to which it is entitled; and such expenditure would have been made largely for the benefit of its Trunk Line connections, to which the road would become a feeder."

This statement appears to be based upon the assumption that, after having provided for good and convenient through routes leading in an easterly direction from points on said Kenova Division through Shenandoah Junction or Hagerstown to northern and eastern markets, the N. & W. Ry. Co. would be obliged to establish additional through routes leading in a westerly direction from the same shipping points through Kenova or Columbus to the same destinations, and permit its cars to go through to such markets and be hauled over connecting lines north and east of Columbus or Kenova instead of going through via Shenandoah Junction or Hagerstown and being hauled by connecting lines north and east thereof, notwithstanding the fact that thereby its own revenues would be reduced, lines north and east of Kenova or Columbus receive benefits they would not otherwise obtain, and discriminations result which would not otherwise occur as between different localities and shippers on the Kenova Division.

Lumber shipped from points on the C. & O. is delivered either to the P. R. R. at Washington, D. C., or to the B. & O. at Staunton, Va. When it is shipped from points on the C. & O. line, divisions of the rate between the different carriers are made on a group-mileage basis, each road receiving practically such a proportion of the through rate as the number of miles the lumber is carried over its line bears to the whole distance it is transported, except that a terminal charge is first deducted for lighterage in New York harbor on shipments to that city. When it is shipped from points on the N. & W. via Columbus, divisions are similarly made; but if shipped via Shenandoah Junction or Hagerstown the amount accruing to the B. & O. or P. R. R. is a fixed sum without reference to the point where the shipment originates. This system of "specific divisions," as it is called, in connection with the higher rates of the N. & W., results in material differences between rates from points on the N. & W. line to Philadelphia and New York markets,
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and rates to the same markets from places on the C. & O. line; the New York divisions of the B. & O. or P. R. R. ranging generally between 3.3 and 4 cents higher than to Philadelphia if the shipments originate on the C. & O. line, while if they originate on the N. & W. line the difference in divisions is always 6 cents. For instance, the distance from Pocahontas, Va., a point on the N. & W., to New York is 626 miles. A carload of lumber shipped over this route would be hauled 355 miles by the N. & W. to Hagerstown, and 271 miles over lines controlled by the P. R. R. north and east thereof. For the haul north and east of Hagerstown the P. R. R. Co. and the Cumberland Valley R. R. Co., which it controls, receive 13 cents per 100 pounds. If the shipment were to Philadelphia the distance would be 536 miles instead of 626; the haul of the N. & W. would be the same as in the first instance, but the haul of the other lines 90 miles less, and their division of the rate 7 cents instead of 13.

The distance from St. Albans, W. Va., a point on the C. & O., to New York is also 626 miles, and the rate on lumber between these points is $21\frac{1}{2}$ cents per 100 pounds. If the P. R. R. hauled a carload of lumber 271 of this 626 miles to New York, from some point south and west thereof, it would receive for its services on the mileage basis referred to about 9.8 cents per 100 pounds. If the shipment were to Philadelphia the distance would be 536 miles, instead of 626, and the rate $19\frac{1}{2}$ instead of $21\frac{1}{2}$ cents. The haul of the P. R. R. in that case would be 181 miles, and its division of the through rate about 6.6 instead of 9.8 cents, making a difference between Philadelphia and New York City of 3.2 cents instead of 6 cents, and consequently a difference between C. & O. and N. & W. points of 2.8 cents per 100 pounds. Using group mileage instead of actual mileage would probably vary the above figures somewhat, but the illustration made is believed to be substantially correct.

The discriminations referred to are further illustrated by the

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following tables which show P. R. R. and C. & O. divisions on lumber shipped from the C. & O. and N. & W. lines:

CHESAPEAKE & OHIO RAILWAY.

Lumber Carloads to New York.

Mileage to New York via Washington, D. C.	FROM	Through Rates.	C. & O. Ry. Proportions to Washington, D. C.	Proportions north of Washington, D. C.
467.	Tuckahoe to			
550.	Thurmond, W. Va., Inc.	21½	10.1	11.4
550.	North Thurmond to			
560.	Macdonald, W. Va., Inc.	21½	10.9	10.6
552.	Thurmond Mine to			
552.	Brown Mine, W. Va., Inc.	21½	10.9	10.6
553.	Rush Run to			
560.	Nuttall, W. Va., Inc.	21½	10.1	11.4
565.	Boone to			
565.	Lookout, W. Va., Inc.	21½	10.9	10.6
563.	Fayette to			
567.	Hawk's Nest, W. Va., Inc.	21½	10.1	11.4
571.	Ansted, W. Va.	21½*	10.8	10.7
569.	Cotton Hill and			
571.	Gauley, W. Va.	21½	10.1	11.4
571.	K. & M. Junction to			
589.	Greendale, W. Va., Inc.	21½	10.9	10.6
577.	Kanawha Falls to			
596.	Coalburg, W. Va., Inc.	21½	10.1	11.4
600.	Ronda to			
600.	Dry Branch, W. Va., Inc.	21½	10.9	10.6
599.	Winifrede Junction to			
608.	Kanawha, W. Va., Inc.	21½	10.1	11.4
610.	South Ruffner and			
612.	Charleston, W. Va.	21½	10.1	11.4
614.	Elk to			
671.	Kenova, W. Va., Inc.	21½	12.3	9.2
783.	Ironton, O.			
710.	Portsmouth, O.			
750.	Manchester, O.			
769.	Ripley, O.	21½	12.3	9.2
769.	Higginsport, O.			
801.	New Richmond, O.			
825.	Cincinnati, O.			

*Plus \$5.00 per car.

CHESAPEAKE & OHIO RAILWAY.

Lumber Carloads to Philadelphia.

Mileage to Philadelphia via Washing- ton, D. C.	FROM	Through Rates.	C. & O. Ry. Propor- tions to Washing- ton, D. C.	Propor- tions north of Washing- ton, D. C.
377.	Tuckahoe to			
460.	Thurmond, W. Va., Inc.	19½	12.1	7.4
460.	North Thurmond to			
470.	Macdonald, W. Va., Inc.	19½	12.6	6.9
462.	Thurmond Mine to			
462.	Brown Mine, W. Va., Inc.	19½	12.6	6.9
463.	Rush Run to			
470.	Nuttall, W. Va., Inc.	19½	12.1	7.4
475.	Boone to			
475.	Lookout, W. Va., Inc.	19½	12.6	6.9
473.	Fayette to			
477.	Hawk's Nest, W. Va., Inc.	19½	12.1	7.4
481.	Ansted, W. Va.	19½*	12.1	7.4
479.	Cotton Hill and			
481.	Gauley, W. Va.	19½	12.1	7.4
481.	K. & M. Junction to			
499.	Greendale, W. Va., Inc.,	19½	12.6	6.9
487.	Kanawha Falls to			
506.	Coalburg, W. Va., Inc.	19½	12.1	7.4
510.	Ronda to			
510.	Dry Branch, W. Va., Inc.	19½	12.6	6.9
509.	Winifrede Jct. to			
518.	Kanawha, W. Va., Inc.	19½	12.1	7.4
520.	South Ruffner and			
522.	Charleston, W. Va.	19½	12.1	7.4
524.	Elk to			
581.	Kenova, W. Va., Inc.	19½	13.7	5.8
693.	Ironton, O.			
620.	Portsmouth, O.			
660.	Manchester, O.			
679.	Ripley, O.	19½	13.7	5.8
679.	Higginsport, O.			
711.	New Richmond, O.			
735.	Cincinnati, O.			

*Plus \$5.00 per car.

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NORFOLK & WESTERN RAILWAY.

Lumber Carloads to New York.

		In cents per 100 pounds.				
Mileage to New York via Hagerstown.	From	Through Rates.		N. & W. Ry. Proportions to Hagers- town, Md.	Propor- tions Hagers- town to New York All kinds.	
		Oak.	Other kinds.	Oak.	Other kinds.	
286	Shepherdstown to					
303	Rippon, W. Va. Inc.	18	18	5	5	13
598	Oakvale to					
614	Bluefield, W. Va. Inc.	25½	27	12½	14	13
614	Abbs Valley and					
626	Cooper, W. Va.	25½	27½	12½	14½	13
627	Bramwell to					
664	Roderfield, W. Va. Inc.	25½	27½	12½	14½	13
673	Iaeger to					
712	Matewan, W. Va. Inc.	26	28	13	15	13
721	Williamson to					
721	Wells Branch, W. Va. Inc.	26½	28½	13½	15½	13
773	Dunlow to					
812	Buffalo, W. Va. Inc.	27	29	14	16	13

NORFOLK & WESTERN RAILWAY.

Lumber Carloads to Philadelphia.

		In cents per 100 pounds.				
Mileage to Phila. via Hagerstown.	From	Through Rates.		N. & W. Ry. Proportions to Hagers- town, Md.		Propor- tions Hagers- town to Philadel- phia. All kinds.
		Oak.	Other kinds.	Oak.	Other kinds.	
196	Shepherdstown to					
213	Rippon, W. Va. Inc.	12	12	5	5	7
508	Oakvale to					
524	Bluefield, W. Va. Inc.	19½	21	12½	14	7
524	Abbs Valley and					
536	Cooper, W. Va.	19½	21½	12½	14½	7
537	Bramwell to					
574	Roderfield, W. Va. Inc.	19½	21½	12½	14½	7
583	Iaeger to					
622	Matewan, W. Va. Inc.	20	22	13	15	7
631	Williamson to					
631	Wells Branch, W. Va. Inc.	20½	22½	13½	15½	7
683	Dunlow to					
722	Buffalo, W. Va. Inc.	21	23	14	16	7

STATEMENT OF RATES AND DIVISIONS

On Lumber, C. L.,

From Chesapeake and Ohio Railway Points
To New York City and Philadelphia.

In cents per 100 pounds.

	Rate to N. Y. City and Philadelphia.	B. & O., So. Ry., P. & R. and C. *Div.	Other Div.
FROM LA GRANGE, VA., TO BUFFALO			
GAP, VA., Inc.			
To New York City, (Av. Dist. 406 miles)	17	11.4	5.6
" Philadelphia, (Av. Dist. 316 miles)	14	8.4	5.6
FROM NORTH MOUNTAIN, VA., TO CLIF-			
TON FORGE, VA., Inc.			
To New York City, (Av. Dist. 430 miles)	19	12.6	6.4
" Philadelphia, (Av. Dist. 340 miles)	17	10	7
FROM LOW MOOR, VA., TO DEEP			
WATER, W. VA., Inc.			
To New York City, (Av. Dist. 532 miles)	21.5	14.1	7.4
" Philadelphia, (Av. Dist. 442 miles)	19.5	8	11.5
FROM DIGBY, W. VA., TO SO. RUFFNER,			
W. VA., Inc.			
To New York City, (Av. Dist. 610 miles)	21.5	14.1	7.4
" Philadelphia, (Av. Dist. 520 miles)	19.5	8	11.5
FROM CHARLESTON, W. VA., TO HUNT-			
INGTON, W. VA., Inc.			
To New York City, (Av. Dist. 657 miles)	21.5	13.9	7.6
" Philadelphia, (Av. Dist. 567 miles)	19.5	8	11.5
FROM NOBLES, W. VA., TO AMANDA,			
KY., Inc.			
To New York City, (Av. Dist. 693 miles)	21.5	11.9	9.6
" Philadelphia, (Av. Dist. 603 miles)	19.5	8	11.5
FROM RUSSELL, KY., TO SO. PORTS-			
MOUTH, KY., Inc.			
To New York City, (Av. Dist. 716 miles)	21.5	11.9	9.6
" Philadelphia, (Av. Dist. 626 miles)	19.5	8	11.5

*The B. & O. divisions are north of Staunton, Va.

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In cents per 100 pounds.			
	Rate to N. Y. City and Philadelphia.	B. & O., So. Ry., P. & R. and C. *Div.	Other Div.
FROM IRONTON, OHIO,			
To New York City, (Distance 702 miles)	21.5	10.9	10.6
" Philadelphia, (Distance 612 miles)	19.5	7.2	12.3
FROM PORTSMOUTH, OHIO,			
To New York City, (Distance 729 miles)	21.5	10.6	10.9
" Philadelphia, (Distance 639 miles)	19.5	9	10.5

*The B. & O. divisions are north of Staunton, Va.

The divisions of the B. & O. and its connections on lumber shipped to New York and Philadelphia via Shenandoah Junction from N. & W. points appear to be the same as those of the P. R. R. on such shipments via Hagerstown.

Mr. Galleher, General Freight Agent of the B. & O. lines east of the Ohio river, testified at the hearing in this case. These differences in divisions were called to his attention, and he was asked whether or not he had anything to offer in defense of the seeming discriminations. He replied that he had not, and that he had not been asked to prepare to defend them. However, Mr. Joyce, Freight Traffic Manager of the P. R. R. lines, stated that while the divisions his road received on lumber from N. & W. points to New York were greater, separately considered, than those on shipments from the C. & O., the P. R. R. was allowed New York mileage on shipments from the latter road when the destination was some point between Philadelphia and New York, Philadelphia mileage when it was a point between Baltimore and Philadelphia, and Baltimore mileage when it was a point south of Baltimore; and he thought the total revenue received on such business from the C. & O. would amount to as much as, and perhaps exceed, that received on similar business from the N. & W. He was asked whether there was any reason why the difference between New York and Philadelphia should be 6 cents per 100 pounds on shipments

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from the N. & W. and only 2 cents on those from the C. & O. To this he replied: "It is a question that both of those companies could better answer than I can. We do not make those differences. They make the through rate from points on their road, and we say we will accept so much."

Through rates from the N. & W. are made by adding to a "specific" south and west of Shenandoah Junction or Hagerstown a "specific" north and east thereof; while those from the C. & O. are made by all the lines interested, and divided as hereinbefore described.

While the foregoing shows differences in divisions ranging from 2 to 2.7 cents per 100 pounds, the differences in through rates are still greater. When through rates are made from points on the C. & O. line to Philadelphia and New York, the former city is given a differential under the latter of 2 cents per 100 pounds; but when such rates are made from points on the N. & W., Philadelphia takes, as previously stated, a differential under New York of 6 cents. This makes a difference of 4 cents which seems to inure partly to the benefit of the initial and partly to the benefit of the terminal lines. On a shipment of lumber from the N. & W. the division of the through rate received by that road would be the same amount whether the destination were Philadelphia or New York, but when a shipment is made from the C. & O. that road receives more if the destination is Philadelphia than if it is New York. An illustration of the differences in C. & O. divisions may be obtained by noting the amount received in each instance on the St. Albans shipment hereinbefore mentioned. Whether the destination is Philadelphia or New York the haul of the C. & O. is the same, but on a shipment from St. Albans to Philadelphia that road would receive about 12.9 cents, while if the destination were New York City it would receive only 11.7 cents. Thus it appears that the principle of "allowing the proportion of rate to distance to decrease as the distance increases" is recognized in making through rates from C. & O. points, but not from N. & W. points.

Between the year 1890 and the present time the condition of the lumber business is said to have ranged as follows: It was what lumbermen call good in 1890, and continued to grow

better until the summer of 1893. At that time it became, as did other business, greatly depressed, and so continued until the fall of 1898, when it began to show some improvement, and in the spring of 1899 prices advanced suddenly, and they ruled more than ordinarily high from that time until last summer. At the present time the condition of the business, including prices, appears to be similar to what it was just previous to the panic of 1893.

The N. & W. claims to have been influenced by the condition of the lumber market in making rates from points on its line of railway; lowering them during the period of depression, and raising them again when conditions became more favorable to the shipper. This has contributed in a greater or less degree to make the lumber business on that line somewhat uncertain; and the advances of July 21, 1899, and February 5, 1900, coming as they did after rates had remained practically stationary for more than five years, operated to the injury of persons who, in the meantime, had made purchases of lumber territory and established manufacturing plants on the line of the N. & W. One witness, who manufactures at Tip Top on the Clinch Valley Division and Wilmore on the Pocahontas Division, stated that previous to July 21, 1899, he contracted for the delivery in market of a large amount of lumber, and therefore was much injured by the advance of that date, and also by that of February 5, 1900.

Another witness, who deals largely in lumber but does not manufacture much, said that when the condition of the lumber market is normal the higher rates from N. & W. points deter dealers from buying there and cause them to purchase instead on the B. & O. and C. & O. lines, where the rates are lower.

An examination of the table above referred to, which shows rates from N. & W. points to New York city, will disclose the fact that between December 28, 1892, and February 5, 1900, inclusive, important changes in those rates were made as follows:

November 1, 1893, an increase of 1 cent per 100 pounds which inured to the benefit of the lines north and east of Shenandoah Junction and Hagerstown.

January 28, 1894, there was a reduction of 1½ cents per 100 pounds which was taken out of the proportion of the N. & W.

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Also, April 3, 1894, the N. & W. made a reduction in its proportion, applying to oak lumber only, of 2 cents per 100 pounds.

July 21, 1899, the rates were increased 1 cent and February 5, 1900, $\frac{1}{2}$ of a cent; making a total increase of $1\frac{1}{2}$ cents per 100 pounds, which was added to the proportion of the N. & W.

These are the principal changes, and they apply generally to shipping points on the Clinch Valley, Pocahontas and Kenova divisions. There were a few other changes, not very important, which have not been specially mentioned.

It will thus be seen that the rates from N. & W. points are now generally 1 cent lower on oak and 1 cent higher on poplar than they were previous to 1893; and the proportions of the B. & O. and P. R. R. north and east of Shenandoah Junction and Hagerstown are in each instance 1 cent higher, while those of the N. & W. are 1 cent lower on oak now than then, and just the same on poplar that they were December 28, 1892.

The excess of the rates to New York City from N. & W. points over those from B. & O. and C. & O. points is nearly all accounted for by the discrimination between Philadelphia and New York City previously described and the advances of July 21, 1899, and February 5, 1900.

This summary of the proofs warrants the inference, and we find as matter of fact, that the rates complained of are excessive and unreasonable and should be reduced.

CONCLUSIONS.

The rates considered in this proceeding apply to lumber shipped to New York city from points on the Kenova, Pocahontas and Clinch Valley divisions of the Norfolk & Western Railway; and it is charged that such rates are unreasonable in and of themselves, and relatively so as compared with the lumber rates of other lines from the same general territory to the same destination.

It will be seen that shipping points on the divisions above named are all located in the states of Virginia and West Virginia, and, with the exception of Kenova, are served only by the Norfolk & Western Railway. Other shipping points in these states, situated northerly of this line and not very far distant

therefrom, are served only by the Chesapeake & Ohio Railway; while the only railroad facilities enjoyed by certain other shipping points in said states, which are located north of the C. & O. line, are those furnished by the Baltimore & Ohio Railroad Company. These several lines extend in an easterly direction from the south-eastern boundary of the state of Ohio across the states of Virginia and West Virginia, and, with their northern and eastern connections, furnish through routes from said shipping points to New York city.

The rates from N. & W. points are higher than those from either C. & O. or B. & O. points. This is a detriment to the localities from which the higher rates prevail, and to shippers therefrom, and an advantage to localities and shippers enjoying the lower rates; while it tends also to prejudice consumers at the points of destination.

This difference in rates is brought about as follows: First, the N. & W. charges relatively higher rates for the haul over its line to Shenandoah Junction or Hagerstown, where it connects with the B. & O. and the P. R. R. systems, respectively, than are charged by the C. & O. and B. & O. companies for the haul over their respective lines; and, secondly, the B. & O. and P. R. R. charge relatively higher rates for the haul north and east of Shenandoah Junction or Hagerstown on lumber shipped from N. & W. points than on lumber from C. & O. points.

The N. & W. claims, first, that its lumber rates are not unreasonable; and in support of this contention refers, among other things, to the higher rates on lumber from certain points in the south to New York city, and to the fact that the average rate per ton per mile of the N. & W. is less than on the large majority of railroads in the United States; secondly, that the lower rates of the C. & O. prove nothing, because they are more influenced by the rates of other trunk lines than are those of the N. & W.; and thirdly, that the rates of the N. & W. may reasonably be relatively higher than those of the C. & O., because, as compared with the C. & O., its line of railway is longer and more circuitous, has less favorable connections between large centers of population, and is more expensive to operate by reason of heavier grades and sharper curves.

It appears to be the fact that there are a few points in the
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South from which the lumber rates to New York for corresponding distances from points of origin are somewhat higher than the rates from N. & W. stations, but this fact of itself gives little support to the rates in question. The conditions generally prevailing in southern territory may justify higher rates than would be reasonable on the N. & W., and those conditions are frequently advanced to show that the rates of lines in that territory should be relatively higher than rates in more populous sections of the country.

It is true that the average rate per ton per mile on the N. & W. is lower than on the large majority of other railroads in the United States; but this is so because the bulk of its tonnage is made up of articles which everywhere secure very low rates. A comparison of the rate per ton per mile of one road with that of another is of little value unless based upon the actual tonnage carried of a particular kind of freight. If the rates of two different roads are the same on each class of articles, but one transports a larger proportion than the other of high-class traffic, the latter road will obviously have the higher average rate per ton per mile. It appears that the principal articles of freight transported by the N. & W. are coal, coke and minerals. For rate making purposes these are generally regarded as low class articles, and where they constitute the principal business of a carrier the average ton-mile rate will of course be comparatively low.

It is undoubtedly true that C. & O. rates on general traffic are influenced to a greater degree than those of the N. & W. by the rates of other trunk lines. While there was no direct proof to this effect, the fact is established by observation and common knowledge of the relations of the trunk lines and the conditions prevailing in trunk line territory. To what extent this influence controls the local lumber rates of the C. & O. can only be inferred, but it is probably a factor of some importance. For this and other reasons we think that lumber rates may lawfully be somewhat higher from points on the N. & W. line than from corresponding points on the C. & O. line. On the other hand, the N. & W. line is located so near the C. & O. and transports lumber under such conditions that, in our judgment, its rates on that article should be somewhat lower than might be reasonable

in distinctly southern territory. With reference to this traffic it lies between the southern and the trunk lines, and its rates should be adjusted to the circumstances of its location.

A comparison of operating expenses and net earnings per mile of road, as set forth in the findings, certainly indicates no reason why the rates per mile of the N. & W. should range higher than those of the C. & O., unless the C. & O. rates are unreasonably low. It appears, however, that the Southern Railway, Baltimore & Ohio, Central of New Jersey, and Pennsylvania participate with the C. & O. in lumber rates on a *pro rata* basis; and this indicates that the roads named are satisfied with the C. & O. rates and regard them as reasonably remunerative. Further, these rates have remained the same for at least ten years, which tends to show that they are considered satisfactory.

Rates to New York city from Saginaw, Muskegon, Grand Rapids, and Manistee, Michigan, and Logansport, Elkhart, Fort Wayne and Indianapolis, Indiana, together with the length of the haul in each instance, were introduced by complainant for the purpose of comparison with N. & W. rates. The length of the haul from each place named is greater than from any point on the N. & W., and it will be found, under the rule of decreasing rate per ton per mile with increasing distance, that lumber rates from these Indiana and Michigan points are relatively much less than those from N. & W. points, and somewhat less than those from either C. & O. or B. & O. points.

Lumber shipped from N. & W. points through the Shenandoah Junction gateway is hauled north and east thereof by the B. & O. and its connections; but when it is shipped through the Hagerstown gateway the haul north and east thereof is over lines controlled by the P. R. R. For the divisions of the through rates which pertain to the haul between Shenandoah Junction and New York the B. & O. is responsible, while the P. R. R. fixes those for the haul north and east of Hagerstown. But these divisions are the same amount in each instance, namely, 13 cents per 100 pounds; and, in determining the same, differences in distance south and west of Hagerstown and Shenandoah Junction are not considered. For example, St. James, Md., a point on the N. & W. line, is 6 miles south of Hagerstown, while Norton, Va., another point on the N. & W., is 446 miles

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distant therefrom; but whether a shipment originates at St. James or Norton the division of the through rate received by the P. R. R. is the same.

Divisions of through rates on shipments from C. & O. points are quite differently made. If the lumber is transported through the Staunton gateway the haul north and east thereof is made by the B. & O. and its connections; if shipped via the Washington gateway the haul between that point and New York is made by the P. R. R. These divisions are made upon a group-mileage basis, as above stated, except that before making the division a terminal charge is deducted for lighterage in New York harbor. In this case distance appears to be recognized as an important factor, and the principle of allowing the proportion of rate to distance to decrease as the distance increases is observed.

This, however, accounts for a part only of the discriminations made by the B. & O. and P. R. R. companies between lumber shipped to New York from C. & O. points and that shipped from N. & W. points, for, as is shown by tables in the findings, the average rate per ton per mile on C. & O. shipments to that destination is materially less than on N. & W. shipments. The B. & O. was not directly represented at the hearing and virtually made no attempt to defend the rates in question, while the explanation of the P. R. R., through its Freight Traffic Manager, was hardly satisfactory.

It appears that lumber produced on the C. & O. and N. & W. railways is of the same general character and comes into competition in the New York market, while the cost of stumpage and manufacture are about the same on one as another of the two roads. Therefore, the existing differences in rates cannot fail to benefit those who do business where the lower rates prevail, while those who are compelled to pay the higher rates suffer corresponding disadvantage on that account.

The line of the N. & W., as compared with that of the C. & O., is longer and more circuitous. For this reason, if other circumstances and conditions on these roads were similar, the N. & W. through rates to New York might reasonably be somewhat higher than those of the C. & O. from corresponding points of origin.

Previous to the advance of July 21, 1899, N. & W. rates had

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remained practically stationary for a period of more than five years. Even after the reduction of January 28, 1894, the rates to New York were higher per 100 pounds from N. & W. points than from either C. & O. or B. & O. points. In view of the fact that the business of the N. & W. was increasing, and taking into account the other circumstances disclosed, we think the lumber shippers were justified in expecting that these rates would not be increased.

After considering all the facts and circumstances that have been brought to our notice, we conclude that the advances of July 21, 1899, and February 5, 1900, so far at least as they apply to poplar lumber, have not been justified and should not have been made, and that the N. & W. proportions of the through rates should be reduced accordingly.

We are also inclined to the opinion that the share of the through rate from N. & W. points received by the P. R. R. or the B. & O., as the case may be, exceeds the standard of reasonableness. Taking into account the distance this lumber is hauled by these lines, the great volume of their through and local business, and the various favorable circumstances under which they operate, it seems to us that a charge of 13 cents for transporting N. & W. lumber from Hagerstown or Shenandoah Junction to New York is open to some criticism. This "specific," as it is called, was advanced about November 1, 1893, from 12 to 13 cents, and has since remained at the latter figure. We should be better satisfied with a reduction to the former amount. The revenue now received by these roads on N. & W. lumber appears to us out of proportion with their revenue on C. & O. lumber, and no good reason is shown for the unusual difference in rates as between Philadelphia and New York shipments. If the former "specific" of 12 cents were restored, and the N. & W. proportions reduced by the amount of the advances above mentioned, there would be an aggregate reduction of $2\frac{1}{2}$ cents in the rate to New York; and, in our judgment, a reduction to that extent ought to be made.

It is the total charge, however, with which the members of the complaining association are concerned. If that charge is reasonable and relatively just it must be immaterial to them what shares are received by the several carriers or upon what prin-

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ciple the apportionment is effected. It may be that some discrimination will result from the use of group-mileage rates in one case and specific divisions in the other, but if the through rate is reduced as herein recommended it is believed that no substantial ground of complaint will remain.

The N. & W. maintains a differential between oak lumber and other kinds, the former taking a rate generally 2 cents per 100 pounds less than the latter. No such distinction is made by the C. & O., while the rates of the B. & O. and P. R. R. companies, for the haul north and east of Shenandoah Junction and Hagerstown, are the same on all kinds of lumber from N. & W. points. The difference thus made by the N. & W. is not complained of and no opinion is expressed as to its reasonableness.

It is alleged that the N. & W. violates section 4 of the Act by maintaining lower rates from Kenova via Shenandoah Junction and Hagerstown than it charges from shorter distance points east of Kenova on shipments made through the same gateways. The evidence shows that no lumber is shipped from Kenova, and that no lumber rates are made therefrom via either Shenandoah Junction or Hagerstown. The precise violation charged, therefore, is not shown. It appears, however, that a proportional rate is maintained to New York from Kenova, on lumber shipped through that junction from other points, of 19 cents per 100 pounds, and that the local rate to Kenova from any point on the Kenova Division, when added to this proportional rate, makes a lower through rate than can be obtained from shorter distance points on the N. & W. line east of the Kenova Division; and it further appears that even when the rates are based on Kenova shippers may obtain permission to forward their lumber through the Shenandoah Junction gateway or the Hagerstown gateway in cases where the proportion of the N. & W. is 12 cents or more per 100 pounds. It is not deemed necessary to make any ruling or comment upon these facts, as this feature of the situation will probably be removed if the rates are reduced in accordance with the views already expressed.

This may be more easily done in view of facts not shown at the hearing and which perhaps did not then exist. It is well known, however, that the Pennsylvania Railroad Company now owns or controls all three of its co-defendants in this proceeding.

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Whatever difficulties, therefore, might be involved in readjusting the rates in question, if these lines remained independent and competitive, are apparently removed by this unified and single control. It seems entirely feasible for the dominant company, by making the necessary reductions, to place all these rates on a basis of relative equality and thus do away with existing discriminations against lumber shipments originating on the N. & W. line.

An order will be entered as authorized by the Act.
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THE WILMINGTON TARIFF ASSOCIATION OF WILMINGTON, NORTH CAROLINA,

v.

THE CINCINNATI, PORTSMOUTH & VIRGINIA RAILROAD COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY; THE LOUISVILLE, EVANSVILLE & ST. LOUIS CONSOLIDATED RAILROAD COMPANY, and George T. Jarvis, Receiver thereof; THE SOUTHERN RAILWAY COMPANY; THE GEORGIA RAILROAD COMPANY; THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; THE WESTERN & ATLANTIC RAILROAD COMPANY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE NORFOLK & WESTERN RAILWAY COMPANY; THE CAPE FEAR & YADKIN VALLEY RAILWAY COMPANY, and Jno. Gill, Receiver thereof; THE SEABOARD & ROANOKE RAILROAD COMPANY, THE RALEIGH & GASTON RAILROAD COMPANY, THE RALEIGH & AUGUSTA AIR LINE, THE CAROLINA CENTRAL RAILROAD COMPANY, THE GEORGIA, CAROLINA & NORTHERN RAILWAY COMPANY, comprising what is called and known as THE SEABOARD AIR LINE SYSTEM; THE RICHMOND & PETERSBURG RAILROAD COMPANY, THE PETERSBURG RAILROAD COMPANY, THE WILMINGTON & WELDON RAILROAD COMPANY, THE MANCHESTER & AUGUSTA RAILROAD COMPANY, THE WILMINGTON, COLUMBIA & AUGUSTA RAILROAD COMPANY, comprising what is called and known as THE ATLANTIC COAST LINE SYSTEM; and THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Decided December 17, 1901.

1. Preferences existing under relative rates to competing localities must be shown to result from wrongful action of the carrier before it can be required under the Act to regulate commerce to readjust the rates in question.
2. The present adjustment of rates on freight traffic from Chicago, St. Louis and other related points of shipment to Wilmington, N. C., op-

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erates largely to deprive that city in its competition for trade in common territory with Norfolk and Richmond and other Virginia cities of the benefits of those primary markets and to limit Wilmington to such intermediate points of supply as Cincinnati and Louisville, from which points the rate relations appear to be fair and reasonable, and this subjects Wilmington to disadvantages which are in substantial degree undue and unreasonable and for which the defendant carriers are to that extent responsible.

3. Rates from Cincinnati and Louisville to Norfolk are much lower than those from St. Louis and Chicago to Norfolk, and the competitive conditions governing the rates from Cincinnati and Louisville appear to be of the same general character as those which apply to rates from Chicago or St. Louis. The same is true of rates to Wilmington from Cincinnati, Louisville, Chicago and St. Louis. No substantial difference appears to exist in the really forceful conditions governing rates from these points of supply, except that of distance, which favors Cincinnati and Louisville. Carriers north of Cincinnati, Louisville and other Ohio River points obtain in most instances shares of the rates to Wilmington which equal their local charges, while they accept much less than their local rates on traffic destined to Norfolk and other Virginia cities, and the rates charged by carriers south of Norfolk, Richmond or other Virginia gateways on Wilmington business are upon a high basis. *Held*, That what constitutes just rate relations from Cincinnati and Louisville to Norfolk and Wilmington is a fair basis for relative rates from St. Louis and Chicago, and that basis should be adopted, with the modification in favor of the carriers that the readjustment may be made on the basis of East St. Louis rates, and the established practice of charging practically the same rates from St. Louis and Chicago to Wilmington continued. *Held, further*, That substantial compliance with such rule of adjustment would result by making the rates from Chicago, St. Louis and East St. Louis to Wilmington 135 per cent of the rates in force from East St. Louis to Norfolk.

Wm. A. Day and Iredell Meares for complainant.
Ed. Baxter and Junius Davis for defendants.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In this case the Wilmington Tariff Association of Wilmington, N. C., complains on behalf of that city and its merchants and dealers that defendants' rates for the transportation of freight articles from Louisville, Cincinnati, St. Louis, Chicago

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and other related points of shipment to Wilmington are unreasonable and unjust; and that such rates, as compared with those charged by defendants from the same points of shipment to Norfolk, Richmond, and other Virginia cities, taking rates common to all, subject Wilmington and merchants and dealers therein to undue and unreasonable prejudice and disadvantage, and make and give unreasonable preference and advantage to Norfolk and said other Virginia cities and merchants and dealers therein. The complainant claims that freight charges from the west to Wilmington and these Virginia cities, to be in all respects reasonable and just, and not unduly preferential or prejudicial should be so adjusted that the rates to Norfolk and Wilmington will be the same; or that those to Wilmington and Norfolk shall differ only in accordance with the difference in short-line distances from the various points of shipment; or according to such other equitable system of differentials above and below the rates to Norfolk and Richmond from the various points of shipment in the West as may be disclosed in this investigation.

The seventh paragraph of the complaint is as follows:

"That under the aforesaid rates merchants at Norfolk, Richmond and other Virginia cities taking the same rates have and exercise a controlling advantage over Wilmington dealers in the distribution throughout North Carolina and South Carolina and other States of products and merchandise originating at and west and north of Cincinnati, Louisville and other points on the Ohio River; and on various articles, as indicated in the foregoing statement of rates. That practically the same carriers participate over many routes in the carriage of traffic from the West to Norfolk and Wilmington, with the exception that the delivering carrier at Wilmington is generally different from the carrier delivering at Norfolk. That under the same rates to Wilmington and Norfolk the delivering carrier and others in the through lines to Wilmington would benefit largely by the increased local or distributed traffic from Wilmington to points in North Carolina, South Carolina, Georgia and other southeastern States. That Wilmington, like Norfolk, is an important Atlantic seaport for ocean-going steamers of large tonnage, and is well equipped in all ways to compete for its share of the import and export traffic of the country, as well as for the wholesale trade in domes-

tic goods, except in the vital matter of properly adjusted transportation charges from western points of shipment. That the traffic and transportation conditions under which the carriers from the West to Norfolk have been induced to apply the same rates to Norfolk as those in effect to Baltimore are substantially duplicated at Wilmington, including through all-rail lines and the competition of fast coastwise steamships; but the defendant carriers engaged in transportation to Wilmington from the West have preferred to withhold from Wilmington the rate facilities which have mainly promoted the greater development of business at Norfolk, and which upon considerations of distance, favorable location, competition between the two cities, and cost of service to the carriers are due to Wilmington to the full extent of their application at Norfolk."

All of the defendants filed answers denying the alleged violations of the law.

Those defendants operating roads north of the Ohio River allege that their rates are confined to Ohio River points, and that the through rate to any point south of that river is made by adding their own rates to the Ohio to the rates established by the lines south thereof over which they have no control. They also affirm the reasonableness of their rates north of the river.

The other defendants set up substantially the same defenses, and among the admissions, denials and averments in such answers are the following: They are common carriers subject to the Act; the short-line distances from said western cities to Norfolk and Wilmington are practically as set forth in the complaint; the rates named in the complaint are generally correct; the lines between the western points and Richmond and Norfolk receive very much less for transportation when destined to Wilmington than when similar shipments terminate at Norfolk or Richmond; the rates from the West to Norfolk are not made on any combination, but are generally the same as to Baltimore; this condition is forced upon the defendants by the trunk lines, which carry freight at extremely low rates to New York, Philadelphia and Baltimore, and in connection with vessels to Norfolk and Wilmington; the rates by such vessels to Norfolk are necessarily lower than to Wilmington, and hence the through rates from western cities to

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Norfolk must be lower than the through rates to Wilmington; the rates complained of do not give Norfolk or Richmond a controlling advantage over Wilmington dealers in the distribution of freights through North Carolina, South Carolina and other States; the circumstances and conditions at Wilmington are substantially dissimilar from the circumstances and conditions which control the rates to Norfolk; the lines which handle much the larger portion of the traffic from the West to Norfolk do not reach Wilmington at all, and the delivering carrier at Wilmington is generally different from the carrier delivering at Norfolk; on account of ocean competition Wilmington has lower rates than it would otherwise be entitled to.

Those defendants which deliver freight to Wilmington aver that the shares they receive out of the through rates from shipping points in the West are not equal to their local rates from the points of junction with their connecting carriers, but that such shares consist of proportional rates which are less than the local charges. They also claim that the rates from Wilmington to almost all the Carolina points on their lines are very much less than the rates to such points from Richmond and Norfolk.

The findings of fact deemed material to the disposition of this case are as follows:

FINDINGS.

1. The complainant is a corporation organized under the laws of North Carolina and is composed of merchants, manufacturers, dealers, shippers and other persons engaged in business in the city of Wilmington. A leading purpose of this corporation is to secure reasonable and just transportation charges to and from Wilmington. Wilmington has a population of about 21,000, an annual wholesale business amounting to thirty-five or forty million dollars, ten or twelve wholesale grocery houses, and three banks with a capital of \$500,000. The city, situated on the Cape Fear river 26 miles from the ocean, possesses an excellent harbor for ocean-going vessels, upon which the Federal Government has expended for improvements over three million dollars, and which affords facilities ample for a large export and import trade. The principal exports, amounting annually to

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ten or twelve million dollars, are cotton, lumber and naval stores. In the season of 1898 it required 30 ships to export 300,000 bales of cotton shipped from Wilmington to foreign ports. The Clyde Steamship Line has weekly steamers plying between Wilmington and New York.

2. Norfolk has a population of about 47,000. The population of Norfolk added to that of Portsmouth and Berkley adjacent to Norfolk and part of the same community aggregates about 70,000. Norfolk has a banking capital of over \$1,500,000, and the assessed value of personal property is about ten millions. Its exports of cotton in 1897 amounted in value to \$16,000,000. Its vessel tonnage amounts annually to over one million tons. In recent years Norfolk has become a port of transshipment of grain moving from the west to European ports. It has manufactories of lumber, tobacco, cotton seed oil and meal and various other products. Richmond, Lynchburg and Roanoke, other Virginia cities in competition with Wilmington, are places of industrial and commercial importance.

3. The defendants are all common carriers by railroad and are engaged in the transportation of interstate traffic from Louisville, Cincinnati, St. Louis, Chicago and other western points of shipment to Wilmington, or to Norfolk, Richmond, Petersburg, Lynchburg and various other destinations, according as their several lines or connected routes may run. The defendant carriers operating railroads which enter Wilmington are the Wilmington, Columbia & Augusta Railroad Company from the south; the Wilmington & Weldon from the north, and from the northeast by the Newbern, N. C., branch; the Cape Fear & Yadkin Valley from the northwest; the Carolina Central from the west. The Wilmington, Columbia & Augusta and Manchester & Augusta roads appear from the evidence to have been operated by the Atlantic Coast Line Railroad Company of South Carolina. It also appears that the Richmond & Petersburg and Petersburg roads were operated at the time of the taking of testimony by the Atlantic Coast Line Railroad of Virginia. The Atlantic Coast Line Railroad Company of Virginia, the Atlantic Coast Line Railroad Company of South Carolina, the Wilmington & Weldon Railroad Company, together with the Norfolk & Carolina Railroad Company and the Southeastern Railroad

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Company, have since been consolidated under the name and title of "Atlantic Coast Line Railroad Company," as is shown by circular dated April 30, 1900, and filed with the Commission by the General Manager of the new company. In May, 1899, the Wilmington & Weldon purchased of the Atlantic & Yadkin Railway Company (successor to the Cape Fear & Yadkin Valley Railway Company on and after February 14, 1899) that part of the old Cape Fear & Yadkin line which extends from Sanford, N. C., to Wilmington, with a branch from Fayetteville, N. C., to the South Carolina state line. The remaining portion of the Atlantic & Yadkin line (formerly Cape Fear & Yadkin) is controlled by the defendant, the Southern Railway Company. The Atlantic Coast Line System comprises about 1,800 miles of road. Its main lines extend from Norfolk and Richmond on the north to Wilmington, Charleston and Denmark on the south, and it has numerous branch lines in North Carolina and South Carolina. Among the connections of the Atlantic Coast Line from the west are the Southern Railway, the Georgia Railroad, the Norfolk & Western Railway and the Chesapeake & Ohio Railway.

The Carolina Central Railroad, above mentioned, is part of the Seaboard Air Line System. It joins the Seaboard Line at Rutherfordton, N. C. The defendants, the Seaboard & Roanoke R. R. Co., the Raleigh & Gaston R. R. Co., the Raleigh & Augusta Air Line, and the Georgia, Carolina & Northern Ry. Co. are also parts of the Seaboard System, and the roads comprised in this system have since the hearing come into the possession of and are being operated by the Seaboard Air Line Railway Company. The Seaboard has extended its line to Richmond since the case was heard.

These two systems, the Atlantic Coast Line and the Seaboard Air Line, deliver all the railroad traffic destined to Wilmington, and they are initial lines for all railroad traffic distributed from Wilmington.

The other defendant railways and some of the routes formed by them and used in the transportation of traffic to Wilmington, Norfolk, Richmond, and the other points involved herein are as follows:

The defendants, the Southern Railway Company and the

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Chesapeake & Ohio Railway Company, deliver western traffic at Norfolk, Richmond and Lynchburg. The Norfolk & Western also reaches Norfolk, Lynchburg and Petersburg, Va. The Atlantic Coast Line takes Richmond traffic from the Norfolk & Western at Petersburg. Another possible route from the west to Norfolk, Richmond and Petersburg would be via the Atlantic Coast Line and its connections, but no traffic of any consequence appears to be carried that way, except, as stated, from Petersburg to Richmond.

The Chesapeake & Ohio Railway extends from Cincinnati and Louisville to Norfolk. It also receives traffic from St. Louis, Chicago and other cities at Cincinnati from the Cleveland, Cincinnati, Chicago & St. Louis Railway, and connecting carriers at Louisville may also deliver traffic to it at that point.

The Norfolk & Western Railway, which extends from Norfolk to Columbus, O., Norton, Va., and Bristol, Tenn., connects at Portsmouth, O., with the Cincinnati, Portsmouth & Virginia, a road leading from Cincinnati, the control of which has been acquired by the Norfolk & Western since the hearing, and with the Louisville & Nashville Railroad at Norton, Va. At this point the Louisville & Nashville delivers to the Norfolk & Western traffic originating at Louisville, Cincinnati and other western points. At Bristol the Norfolk & Western connects with the Southern Railway.

The Southern Railway reaches Atlanta and Chattanooga, and Cincinnati and Louisville in connection with the Cincinnati, New Orleans & Texas Pacific Railway, a closely affiliated company. At Louisville it receives traffic from St. Louis via the Louisville, Evansville & St. Louis Consolidated Railroad. This road has become, since the hearing, a part of the Southern System.

The Pittsburg, Cincinnati, Chicago & St. Louis Railway, Cincinnati, Hamilton & Dayton Railway and Chicago, Indianapolis & Louisville Railway are roads operated north of the Ohio River and used with other defendant roads in carrying traffic from Chicago and other northerly points via Ohio River crossings to Wilmington and to Norfolk, Richmond and other Virginia cities.

The Atlantic Coast Line and Seaboard Air Line participate
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but little, if at all, in the traffic shipped from Louisville, Cincinnati, St. Louis or Chicago to Norfolk, Richmond and Lynchburg, but they are, as above stated, the only lines delivering traffic into Wilmington. All of the other defendants are engaged in the transportation of freight to both Wilmington and Norfolk and also to Richmond and Lynchburg.

4. The distance from Richmond to Wilmington by the Atlantic Coast Line is 245 miles. From Norfolk to Wilmington by the Atlantic Coast Line the distance is 240 miles. From Norfolk to Wilmington by the Seaboard Air Line the distance is about 381 miles. From Richmond to Wilmington by the Seaboard Air Line the distance is 364 miles.

The short line distances from Cincinnati are as follows:

To Richmond,	C. & O.,	617 miles.	
To Norfolk,	C. & O.,	706 miles.	
To Wilmington,	C. & O.,	766 miles.	(via Lynchburg.)
"	"	Southern,	772 miles.
"	"	Southern,	743 miles. (Jellico route.)

The short line distances from Louisville are as follows:

To Richmond,	C. & O.,	683 miles.	
To Norfolk,	C. & O.,	771 miles.	
To Wilmington,	Southern,	751 miles.	
"	"	Southern,	773 miles.
"	"	Southern,	750 miles. (Jellico route.)
"	"	Southern,	728 miles. (Jellico route.)

The Jellico routes are those formed by the junction at Jellico, Tenn., of the Louisville & Nashville and Southern roads. The Jellico routes are among the short lines, but the testimony is that traffic is not routed that way. This is apparently due to the fact that the Southern is itself an initial carrier from Louisville, and that it receives Cincinnati traffic from its affiliated line, the Cincinnati, New Orleans & Texas Pacific.

Distances from Chicago are determined by adding to the distances from Cincinnati or Louisville the following:

Chicago, Indianapolis & Louisville to Cincinnati.....	308 miles.
" " " " to Louisville	324 "
Pittsburgh, Cincinnati, Chicago & St. Louis to Cincinnati.....	298 "
" " " " to Louisville	304 "
Cleveland, Cincinnati, Chicago & St. Louis to Cincinnati.....	306 "
" " " " to Louisville	322 "

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The distances from St. Louis are determined by adding to the distances from Cincinnati and Louisville the following:

Louisville, Evansville & St. Louis to Louisville.....	274 miles..
“ “ “ “ (Louisville), L. & N. to Cincinnati	384 “
Louisville & Nashville (Henderson, Ky.), Louisville, Henderson & St. Louis to Louisville.....	318 “
Louisville & Nashville (Henderson, Ky.), L. H. & St. L. (Louisville), L. & N. to Cincinnati	428 “
Baltimore & Ohio Southwestern to Louisville.....	327 “
“ “ “ “ to Cincinnati	342 “
Cleveland, Cincinnati, Chicago & St. Louis to Louisville.....	392 “
“ “ “ “ to Cincinnati	375 “

The Chesapeake & Ohio and Cleveland, Cincinnati, Chicago & St. Louis Railways connect at Cincinnati and form lines from Chicago and St. Louis to Richmond and Norfolk and with connecting roads to Wilmington. The distances from Chicago by this route are 923 miles to Richmond and 1012 miles to Norfolk. The distances from St. Louis by this route are 992 miles to Richmond and 1,081 miles to Norfolk. Somewhat shorter routes can be figured, but these are probably the shortest routes over which traffic actually passes to Richmond and Norfolk from Chicago and St. Louis. The short lines to Wilmington from Chicago and St. Louis are, from Chicago, the Pittsburgh, Cincinnati, Chicago & St. Louis to Louisville and the Southern route from Louisville, 1,055 miles; and from St. Louis, the Louisville, Evansville & St. Louis to Louisville and Southern route from Louisville to Wilmington, 1,025 miles. The routes from Chicago and St. Louis to Wilmington via Cincinnati are nearly as short—the C. C. C. & St. L.—C. & O. route from Chicago to Wilmington via Lynchburg and the Southern is 1,072 miles, and the Baltimore & Ohio Southwestern and Southern from St. Louis to Wilmington is 1,114 miles. Arranged in tabular form these short line distances are:

From.	To	Richmond.	Norfolk.	Wilmington.
Chicago		923	1012	1055
St. Louis		992	1081	1025

The Pennsylvania R. R. system, in connection with the Richmond, Fredericksburg & Potomac Railroad from Quantico Va., reaches Richmond, Va., over a distance of 961 miles from Chicago. This line may connect with the Chesapeake & Ohio Railroad I. C. C. REP.

way at Richmond and form a route from Chicago to Norfolk with a total distance of 1,049 miles. The Pennsylvania system also has a line from Chicago to Norfolk in connection with the New York, Philadelphia & Norfolk of 1,027 miles.

5. The rates to Wilmington from St. Louis or East St. Louis, Cincinnati and Louisville are made up of certain proportional rates to "Virginia Gateways," including Richmond and Norfolk, added to certain rates from such gateways to Wilmington; and the proportional rates to Virginia Gateways are less than the local or straight rates in force. The rates from Chicago to Wilmington are made in the same way, but the proportional rates to Richmond or Norfolk are the same in amount as the straight or local rates to those cities. All of these proportional rates, including those from Chicago, are based upon the "Southern Freight Classification;" while the rates on shipments consigned for delivery in Richmond or Norfolk are based upon the "Official Classification." The combination of rates via Norfolk to Wilmington has been limited to the Seaboard Air Line from Norfolk to Wilmington. The Atlantic Coast Line receives traffic for Wilmington at Richmond. Some shipments are made by the way of Lynchburg and Roanoke, and these reach the Coast Line at Sanford, N. C., where it connects with the Southern Railway.

The through rates to Wilmington, Richmond and Norfolk on all of the through lines from the west are substantially the same as those applying by the short lines to Richmond and Norfolk and via those lines connecting with the Atlantic Coast and Seaboard Air Lines to Wilmington. To this there appears by the tariffs to be one exception. It often happens that the rate from Chicago to Richmond or Norfolk, according to the Official Classification, is lower than the proportional rate thereto on Wilmington business, which is based upon the Southern Classification, and this produces a combination of the local to Richmond or Norfolk with the rate therefrom to Wilmington which is less than the combination of the proportional to Richmond or Norfolk with the rate to Wilmington. An example is hardware, in class 3 of the Official and class 2 of the Southern Classification. The third class (Official Classification) rate Chicago to Richmond is 47 cents, while the second

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class (Southern Classification) proportional rate Chicago to Richmond applying on Wilmington business is 62 cents. The rate from Richmond to Wilmington is 40 cents. So the combination of the local rate to Richmond with the Wilmington rate therefrom is 87 cents, while the combination of the proportional to Richmond with the rate from that point to Wilmington gives a rate of \$1.02. The tariff used by the Norfolk & Western routes (Cumberland Gap Despatch Tariff) provides for using the lowest combination, and the same course is implied, though not expressly directed in the tariff in effect over the Chesapeake & Ohio routes (Kanawha Despatch Tariff). By the Southern Railway routes and other lines south of the Ohio the Southern Classification rating appears by the tariffs to apply without any exception permitting the application of lower combination rates over other routes. There are numerous instances where these lower combination rates or differences in rates occur, and they arise on shipments from St. Louis as well as from Chicago. They appear whenever the Official Classification rating is lower than the Southern Classification rating applied as above set forth. As a rule, commodities are not classified lower in the Southern than in the Official Classification.

Besides class rates to Richmond and Norfolk, numerous lower commodity rates are in effect to those cities. The tariffs of the Chesapeake & Ohio and Norfolk & Western routes do not provide, whatever the actual practice may be, for using these lower commodity rates in connection with the rates from Richmond and Norfolk to Wilmington when they produce rates less than the through rates in force to Wilmington. The application of such combinations seems limited, under the tariffs, to class rates. Richmond and Norfolk may therefore at times have lower local rates from the west than the rates applied up to those points on traffic destined to Wilmington, and this may render the combination of rates to and from Richmond or Norfolk less than the through rate to Wilmington.

When the complaint was filed and at the time of the hearing the through rates to Wilmington were somewhat higher than they have been since December 24, 1900. On that date the lines south of Richmond and Norfolk, the Atlantic Coast Line and Seaboard Air Line, reduced the proportional rates from

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these and other Virginia gateways to Wilmington on business from the west. On April 16, 1901, the rates on third, fourth and fifth classes from Virginia gateways to Wilmington were further reduced. The total reductions are shown below:

Classes	1	2	3	4	5	6
From	55	45	40	30	25	17
To	50	40	31	26	20	15
Reductions in cents per 100 lbs.	5	5	9	4	5	2

Packing-house products from 10 to 9 cents; grain and hay from 10 to 8 cents. No change was made in the proportional rate on flour, which remains at 11 cents per hundred in sacks and at 20 cents per barrel.

The proportional rates from Cincinnati and Louisville to Richmond and Norfolk on Wilmington traffic have been since the case was brought and still are in cents per 100 pounds as follows:

Classes.....	1	2	3	4	5	6
Rates	32	28	22	15	12	10

Packing-house products 15 cents. Flour took a proportional of 10 cents per 100 pounds in sacks or 20 cents per barrel which has been reduced to 9½ cents per 100 pounds or 19 cents per barrel. Grain and hay have been reduced from 10 to 9½ cents.

The present through rates therefore from Cincinnati and Louisville to Wilmington are:

Classes.....	1	2	3	4	5	6
Rates	82	68	53	41	32	25

Packing-house products 24 cents. Flour in sacks 20½; in barrels (per. bbl.) 39. Grain and hay 17 cents. These rates are from ½ to 9 cents less than those previously in force.

The proportional rates from Cincinnati and Louisville to Richmond and Norfolk applicable to Wilmington business are greatly less than the local rates from Cincinnati and Louisville to Richmond and Norfolk. The local and proportional rates are compared as follows:

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Cincinnati or Louisville to Richmond or Norfolk.

Classes	1	2	3	4	5	6	P. H.	Flour.		Grain.	Hay.
							Prod-ucts.	Sacks.	Bbls.		
Local rates . .	62	53½	40½	27½	23	18½	23	12	24	12	23
Proportional .	32	28	22	15	12	10	15	9½	19	9½	9½
Differences . . .	30	25½	18½	12½	11	8½	8	2½	5	2½	13½

The proportional class rates from East St. Louis to Richmond or Norfolk on Wilmington business are substantially the local rates from East St. Louis to Cincinnati plus the proportional class rates above mentioned from Cincinnati to Richmond or Norfolk, the only difference being that on class 1 the proportional is 2 cents less and on class 2 it is 1 cent less than the local charges. As to commodities, grain, for example, such local rates are somewhat higher than the part of the proportional applying between East St. Louis and Cincinnati or Louisville. The proportional rates from East St. Louis to Richmond or Norfolk are as follows:

Classes	1	2	3	4	5	6	P. H.	Flour.		Grain and
							Prod-ucts.	Sacks.	Bbls.	
Proportional Rates . . .	70	61	47	32	27	22	27	19½	39	17½

The local class rates from East St. Louis to Richmond or Norfolk are higher than the proportional class rates just given by from 4 cents on class 6 to 14 cents on class 1. The locals exceed the proportionals on packing-house products by 5 cents, on hay by 14½ cents, and on grain the local and proportional rates are the same. The proportionals exceed the locals between these points by 4 cents per barrel on flour in barrels and 2 cents per 100 pounds on flour in sacks.

From Chicago to Richmond or Norfolk the proportional rates are the same on the various classes as the rates which apply locally between Chicago and Richmond or Norfolk, namely:

Classes	1	2	3	4	5	6
Proportional and Local Rates	72	62	47	32	27	22

Packing-house products take a rate of 27 cents locally to Richmond or Norfolk or to those points when destined to Wilmington. On flour in sacks the local rate is 14½ cents, while the
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proportional is $19\frac{1}{2}$ cents, and on flour in barrels the local rate is 29 cents per barrel, as against a 39-cent proportional. The local rate on grain is $14\frac{1}{2}$ cents and the proportional is $17\frac{1}{2}$ cents. On the other hand, the proportional on hay is $24\frac{1}{2}$ cents while the local is 27 cents. If the lowest combinations invariably apply no actual injustice results from the fact that the local rates are less than the proportional rates in the instances named, but in that case it does not appear why the tariffs should make the proportionals higher than the locals.

The proportional class rates from Chicago to Richmond or Norfolk are equal in amount to the sum of the local rates from Chicago to the Ohio River (Cincinnati or Louisville) and the proportional rates from Cincinnati or Louisville to Richmond or Norfolk.

Through tariff rates from Chicago, East St. Louis, Cincinnati and Louisville to Wilmington are as shown in the following table. The rates are named from East St. Louis instead of St. Louis for the reason that while the rates to Wilmington from East St. Louis and St. Louis are the same the rates to Norfolk and Richmond from St. Louis are the Mississippi River bridge arbitrary higher than East St. Louis.

To Wilmington.

Classes	1	2	3	4	5	6	P. H. Prod- ucts.	Flour. Sacks.	Flour. bbls. (Per bbl.)	Grain and Hay.
From										
Chicago	122	102	78	58	47	37	36	30	58	$32\frac{1}{2}$
E. St. Louis .	120	101	78	58	47	37	36	30	58	$25\frac{1}{2}$
Cincinnati or Louisville . .	82	68	53	41	32	25	24	20	39	$17\frac{1}{2}$

The rates to Richmond and Norfolk, restated here for convenient comparison, are as follows:

To Richmond and Norfolk.

Classes	1	2	3	4	5	6	P. H. Prod- ucts.	Flour. Sacks.	Flour. bbls. (Per bbl.)	Grain.	Hay.
From											
Chicago 72	62	47	32	27	22	27	14½	29	14½	27	
East St. Louis 84	72½	55	37½	32	26	32	17½	35	17½	32	
Cincinnati or Louis- ville 62	53½	40½	27½	23	18½	23	12	24	12	23	

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The rates from Kansas City are made by adding the local charges to the Mississippi River to the established rates from the Mississippi River, at East St. Louis and other gateways, and this combination applies as well on Norfolk or Richmond as on Wilmington business.

6. The Pennsylvania System publishes a tariff (Bases for Rates East Bound, I. C. C. No. 5) providing for through rates to Wilmington from points west of Pittsburg by adding its rates to New York to the following class rates in cents per 100 pounds (Official Classification) via the Clyde Steamship Line from New York to Wilmington:

Classes	1	2	3	4	5	6
Rates	30	25	18	15	7	7

Using the Official Classification, the rates by the rail and water line from Chicago and East St. Louis to Wilmington are as follows:

	Classes	1	2	3	4	5	6
From Chicago.	Rates	105	90	68	50	37	32
From E. St. Louis.	Rates	117	100½	76	55½	42	36

These rates are less than the all-rail class rates by the following amounts:

	Classes	1	2	3	4	5	6
From Chicago.	Rates	17	12	10	8	10	5
From E. St. Louis.	Rates	3	½	2	2	5	1

Such differences take no account of the differences in classification.

The rail rates from Cincinnati and Louisville to Wilmington are lower than the rail and water rates via New York over the Pennsylvania and Clyde lines. The differences between these rates are as follows:

	Classes	1	2	3	4	5	6
In favor of all-rail lines	13	13½	8½	4½	1	3½	

7. The rates from western points to Norfolk are the same as those in force to Baltimore, and Baltimore takes rates from the west which are certain differentials lower than the rates to New York. These differentials applying at the North Atlantic ports, 9 I. C. C. REP.

taking Chicago, for example, are as follows: The rates to New York on the six classes embraced in the Official Classification are 75, 65, 50, 35, 30 and 25 cents per 100 pounds, respectively. The rates to Boston are certain arbitraries, amounting to about 10 per cent, higher than the rates to New York, except as to export traffic, on which Boston takes the New York rate. The rates to Philadelphia are 2 cents lower than those to New York, and the rates to Baltimore are 3 cents less than the rates to New York. These differentials have been in force for 20 or more years. They have been reduced somewhat in the past 3 years on export business, but on domestic business they remain the same. They are known as the "trunk line differentials," and, though they have been the subject of frequent dispute between the carriers and of complaint on the part of shippers, the carriers appear to regard them as the most satisfactory basis for arriving at competitive rates to these seaboard terminals.

Precisely when Norfolk secured Baltimore rates does not appear; but it is affirmed by some of the defendants and not disproved that the Baltimore adjustment was extended to Norfolk in consequence of the competition for Norfolk business by trunk lines to Baltimore and their water connections by the Chesapeake Bay to Norfolk. It is said on behalf of the Chesapeake & Ohio that when that line was completed to Norfolk it found the Baltimore rates in force there, and that it was forced to accept and has been under the compulsion of continuing that rate basis at Norfolk. The Norfolk & Western also put in these rates to Norfolk when its line was constructed to that city. Another competing line reaching Norfolk is the Cape Charles route (New York, Philadelphia & Norfolk and Pennsylvania). While the evidence does not disclose when the trunk line rate basis was made effective at Norfolk, enough does appear to make it clear that these rates have been controlled and made relatively low by the competition of through lines from the west, and that if the defendant carriers now competing for Norfolk business, the Chesapeake & Ohio, the Norfolk & Western and Southern routes, should raise their rates to Norfolk, there would still be at least one other line, the Cape Charles route, to continue the present rates in force. Whether that line would do this or not cannot

of course be found, but such action might afford it an opportunity to somewhat increase its rates to Norfolk and still keep them lower than those of the other roads, thus retaining its competitive advantage while adding to its revenues.

When the Chesapeake & Ohio and Norfolk & Western routes were completed to Norfolk they, the Chesapeake & Ohio first and the Norfolk & Western following, made the Norfolk rates the maximum to intermediate Virginia cities. On the Chesapeake & Ohio the Norfolk rate applies over a group of stations embracing about 400 miles of line, and extending as far west from Norfolk as Hinton, W. Va. The Norfolk & Western applies the Norfolk rate as far west as Roanoke, Va. The Chesapeake & Ohio did this in order to comply with its interpretation of the long and short haul clause of the Act to regulate commerce and that interpretation was not contrary to that which was announced by the Commission in 1887. Some of the stations on the Norfolk & Western west of Roanoke take higher rates than those in force to Norfolk, Roanoke and intermediate points.

While the all-rail rates from the West to Norfolk are, as above stated, generally as low as the trunk line rates to Baltimore, and therefore less than those to New York, Philadelphia or Boston, the all-rail rates from the West to Wilmington are considerably higher than the combined rail and water rates from Chicago and St. Louis via New York to Wilmington. It is claimed, nevertheless, that Wilmington rates are made with reference to this rail and water competition. It may be from Cincinnati and Louisville, but it apparently is not on any class of freights from Chicago.

Under the rates in effect, Wilmington is greatly hampered in competing with the Virginia cities except in a small area adjacent to Wilmington. The intermediate Virginia cities have this advantage because Norfolk takes certain competitive rates which two of the carriers make the maximum of rates to intermediate points in Virginia. It is also to be observed that Richmond has water competition by the James River and is also reached by the Pennsylvania System (Richmond, Fredericksburg & Potomac connection) over a competitive route from Chicago and other western points of origin. Its situation in this case is not

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unlike Norfolk with respect to the controlling effect of competitive carrying lines upon the rates. It is apparent, however, that any increase in the rates to Norfolk would be followed by a corresponding increase to Richmond, and so it may fairly be found that all rates to intermediate Virginia cities depend in amount upon the maximum rates in force from time to time to Norfolk, the longer distance town.

Wilmington seeks to bring goods from the West and ship back the same goods or articles produced therefrom into Carolina territory. Norfolk, located on the seaboard and but little nearer to the western point of supply, is able to do this for most Carolina destinations to the exclusion of Wilmington so far as rates may give it that advantage. Richmond and other Virginia cities do the same thing because they take the Norfolk rate.

8. Norfolk has become an exporting city of importance in the past 10 years. Besides its Trans-Atlantic service, it is served by two important steamship lines to the north, one to New York and the other to Boston. It also has steamer connection with Baltimore. Wilmington, although it has convenient and adequate facilities, has but one regular line of steamers, the Clyde Line to New York. While it cannot compete with Norfolk, either as a seaport, manufacturing city, or distributing market for interior towns, except in a narrow limit of territory, under the present adjustment of rates from western points of shipment, it is evident that it could and would do so, especially as a manufacturing and distributing town, with rates from the West not greatly higher than those in effect to Norfolk.

Ten or fifteen years ago the larger part of the wholesale trade in middle and eastern North Carolina and a portion of northern South Carolina was held by Wilmington merchants. This trade has left Wilmington in great degree and now has its sources in Norfolk, Richmond and other Virginia cities, and in the West, from whence the interior North Carolina merchant may purchase and ship direct. This diversion of trade from Wilmington is not due to any increase of through rates to Wilmington, for such rates are lower now to Wilmington as a rule than they were in former years. The loss to Wilmington of this distributing trade has been caused by changes in the rate relations, first as between Norfolk, Richmond and other Virginia cities

and Wilmington; and second, by reduction of through or total rates from the West to interior Carolina points. Still another cause for this is found in the fact that many of these interior localities have naturally increased in population and business importance, becoming towns and cities of considerable size, and are themselves engaged in some degree, so far as rates may permit, in the distribution of products at points in the surrounding territory. Undoubtedly the chief reason why Wilmington has lost so much of her distributing trade in the Carolinas is found in the adjustment of rates and the opportunities thereby afforded to Norfolk, Richmond and the other Virginia cities to undersell Wilmington in this competitive territory. This is not a cause which operated immediately to deprive Wilmington of so large a part of its distributing trade. The habit of trading with the Wilmington dealer, the greater proximity of Wilmington than Norfolk to the point of sale, the system of credits established through a long period of years, all operated against the rate advantage enjoyed by Virginia cities, and rendered the trade supremacy of those cities as compared with Wilmington a matter of growth. It is testified without contradiction that Wilmington merchants are still able to hold some trade that would otherwise go to Norfolk or Richmond by extending longer credits to the purchaser.

9. The complainant contends that under the present rate adjustment Wilmington cannot compete with Norfolk or other Virginia cities for the distributing trade to numerous points in North and South Carolina which are situated at considerably less distance from Wilmington than from Norfolk, although the local rates from Wilmington to such points are not unfairly adjusted as compared with those from Norfolk.

By referring again to the fourth finding it will be seen that the difference in short line distances from Cincinnati to Wilmington and Norfolk is in favor of Norfolk by about 60 miles, and from Louisville it is in favor of Wilmington by about 20 miles. It is therefore not unfair to Norfolk to estimate that from all western points her advantage in distance over Wilmington is the higher figure, 60 miles. Following are several intermediate points on various through lines to Wilmington, with the distances thereto from Wilmington and Norfolk, and the net

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difference in distance in favor of Wilmington or Norfolk after taking into account the 60 miles estimated shorter distance from the west to Norfolk as against Wilmington:

Interior Carolina Points.	From Wilmington. Miles.	From Norfolk. Miles.	Net difference in favor of Wilmington.	Net difference in favor of Norfolk.
Goldsboro, N. C.	84	157	13	
Wilson, N. C.	108	134	.	34
Selma, N. C.	107	160		7
Hamlet, N. C.	110	272	102	
Darlington, S. C.	120	364	184	
Raleigh, N. C.	133	177		16
Wadesboro, N. C.	135	297	102	
Bennettsville, S. C.	140	261	61	
Sumter, S. C.	149	326	117	
Monroe, N. C.	163	325	102	
Greensboro, N. C.	179	257	18	
Charlotte, N. C.	187	350	103	
Branchville, S. C.	210	387	117	
Chester, S. C.	208	370	102	
Gastonia, N. C.	209	372	103	
Lexington, N. C.	212	286	14	
Carlisle, S. C.	225	387	102	
Spartanburg, S. C.	263	426	103	
Greenwood, S. C.	281	443	102	
Asheville, N. C.	333	441	48	

In three instances the net differences in favor of Wilmington are 13, 14 and 18 miles; all the others, 14 in number, range from 48 to 117 miles in favor of Wilmington. Norfolk has the net difference in its favor only in three cases, one 7 miles, one 16, and the other 34. The combined rates to and back from Wilmington as a general rule are higher, usually considerably higher, than the combinations to and from Norfolk, except on packing-house products and here and there an exception in respect of some other commodities. The differences are sufficiently indicated by the following tables showing the rates to Goldsboro, N. C., the point nearest Wilmington, Asheville, N. C. the point

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farthest from Wilmington, Hamlet, N. C., Wadesboro, N. C., Sumter and Darlington, S. C.:

Goldsboro 84 miles from Wilmington, 157 miles from Norfolk.

From Louisville and Cincinnati.

	Classes.		P. H. Products.	Grain.	Flour.	
	1	6			Per 100 lbs. Sacks.	Per bbl.
Through	93	31	37	26½	30½	61
Norfolk combination..	123	39½	45	29	33	66
Wilmington combina- tion	127	42	*39½	28	33	*65

From East St. Louis.

Through	131	43	49	34½	40	80
Norfolk combination..	145	47	54	34½	38½	77
Wilmington combina- tion	165	54	*51½	36	43	84

From Chicago.

Through	133	43	49	34½	40	80
Norfolk combination..	133	43	49	31½	35½	71
Wilmington combina- tion	167	54	51½	36	43	84

*Denotes Wilmington combination lower than Norfolk combination.

Asheville, 333 miles from Wilmington, 441 miles from Norfolk.

From Louisville and Cincinnati.

	Classes.		P. H. Products.	Grain.	Flour.	
	1	6			Per 100 lbs. Sacks.	Per bbl.
Through	104	47	42	27	33	63
Norfolk combination..	146	56½	55	37	39	77
Wilmington combina- tion	166	63	56	42	47	92

From East St. Louis.

Through	142	59	54	35	42½	82
Norfolk combination..	168	64	64	42½	44½	88
Wilmington combina- tion	204	75	68	50	57	111

From Chicago.

Through	144	59	54	35	42½	82
Norfolk combination..	156	60	59	39½	41½	82
Wilmington combina- tion	206	75	68	50	57	111

Hamlet, 110 miles from Wilmington, 272 miles from Norfolk.

From Louisville and Cincinnati.

From Louisville and Cincinnati.					Flour.	
	Classes.	P. H.	Grain.	Per 100	Per	
	1	6	Products.	lbs.	bbbl.	
				Sacks.		
Through	100	35	39	28½	32½	65
Norfolk combination..	130	43½	47	31	35	70
Wilmington combina- tion	138	45	*43	30	38	74

From East St. Louis.

Through	138	47	51	36½	42	84
Norfolk combination..	152	51	56	36½	40½	81
Wilmington combina- tion	176	57	*55	*38	48	93

From Chicago.

Through	140	47	51	36½	42	84
Norfolk combination..	140	47	51	33½	37½	75
Wilmington combina- tion	178	57	55	38	48	93

*Denotes Wilmington combination lower than Norfolk combination.

Wadesboro, 135 miles from Wilmington, 297 miles from Norfolk.

From Louisville and Cincinnati.

From Louisville and Cincinnati.					Flour.	
	Classes.		P. H.	Grain.	Per 100 lbs. Sacks.	Per bbl.
	1	6	Products.			
Through	100	35	39	28½	32½	65
Norfolk combination..	130	43½	47	31	35	70
Wilmington combina- tion	139½	45½	*43½	31	38½	77½

From East St. Louis.

Through	138	47	51	36½	42	84
Norfolk combination..	152	51	56	36½	40½	81
Wilmington combina- tion	177½	57½	*55½	39	48½	96½

From Chicago.

Through	140	47	51	36½	42	84
Norfolk combination..	140	47	51	33½	37½	75
Wilmington combina- tion	179½	57½	55½	39	48½	96½

*Denotes Wilmington combination lower than Norfolk combination.

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Sumter, 149 miles from Wilmington, 326 miles from Norfolk.

From Louisville and Cincinnati.

	Classes.		P. H.		Flour.	
	1	6	Products.	Grain.	Per 100	
					lbs.	Per
					Sacks.	bbl.
Through	117	42	44	33	37½	68
Norfolk combination..	147	50½	52	36	40	74
Wilmington combina- tion	141	54	*49	*34½	40½	78½

From East St. Louis.

Through	155	54	56	41	47	87
Norfolk combination..	169	58	61	41½	45½	85
Wilmington combina- tion	179	66	61	42½	50½	97½

From Chicago.

Through	157	54	56	41	47	87
Norfolk combination..	157	54	56	38½	42½	79
Wilmington combina- tion	181	66	61	42½	50½	97½

*Denotes Wilmington combination lower than Norfolk combination.

Darlington, 120 miles from Wilmington, 364 miles from Norfolk.

From Louisville and Cincinnati.

	Classes.		P. H.		Flour.	
	1	6	Products.	Grain.	Per 100	
					lbs.	Per
					Sacks.	bbl.
Through	117	42	44	33½	37½	69
Norfolk combination..	147	50½	52	36	40	74
Wilmington combina- tion	*138	*49	*46½	*33	*39	*74

From East St. Louis.

Through	155	54	56	41½	47	88
Norfolk combination..	169	58	61	41½	45½	85
Wilmington combina- tion	176	61	*58½	*41	49	93

From Chicago.

Through and	157	54	56	41½	47	88
Norfolk combination..	157	54	56	38½	42½	79
Wilmington combina- tion	178	61	58½	41	49	93

*Denotes Wilmington combination lower than Norfolk combination.

The adjustment of rates on packing-house products seems by the foregoing tables and by combination rates to the other interior Carolina points to be in favor of Wilmington. For some reason, not disclosed, the rates on this commodity appear to have been made an exception.

To all of the points above mentioned, except Asheville, the through class rates from Chicago are the same as the combination of rates via Norfolk or Richmond. From East St. Louis, Louisville and Cincinnati they are as much less than the Norfolk combination as the difference between such combination and the through rates made by adding the established proportionals to Norfolk or Richmond and the local rates therefrom. It will be observed also that the differences between the combined rates to and from Norfolk and those to and from Wilmington are less on traffic from Louisville and Cincinnati than from East St. Louis and greatly less than such differences in rates on traffic from Chicago. This is due to the low proportional rates from Louisville and Cincinnati to Richmond or Norfolk as compared with the straight or local rates to Richmond or Norfolk. For example, 32 cents is the first class proportional rate to Richmond or Norfolk from Louisville or Cincinnati and 62 cents is the first class local rate, while from East St. Louis the difference is much less, being 70 cents proportional and 84 cents local, first class; and from Chicago the local and proportional rates to Virginia cities are the same in amount, and are so actually, except as they may be varied by the application of the Official Classification on local business and the Southern Classification on through Wilmington business.

Prior to April 16, 1901, the differences between the proportional and local rates from Norfolk or Richmond to Wilmington were 10 cents first class, 7 cents second class, 6 cents third class, 5 cents fourth class, 3 cents fifth class and 2 cents sixth class. On or about that date, the local and proportional class rates were made the same, namely, 50, 40, 31, 26, 20 and 15 cents, on the first, second, third, fourth, fifth and sixth classes respectively; and this, as stated in the fifth finding, resulted in reductions of the rates applicable to Wilmington from the west at the time the complaint was filed of from 2 to 9 cents. It follows, with local class rates from Chicago to Norfolk and Richmond as low as the proportional rates thereto on Wilmington business,

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that Norfolk or Richmond merchants can purchase goods in the Chicago market, or in sections from which the rates base on Chicago, bring them to Norfolk or Richmond, and reship into Wilmington itself at a total rate as low as the through rate to Wilmington. From East St. Louis, Norfolk or Richmond merchants can do this only under the additional disadvantage of the higher rate to Norfolk or Richmond than the proportional rate on direct Wilmington business, as above shown; and from Louisville or Cincinnati the difference against Norfolk is still greater.

This differential from Louisville and Cincinnati on Wilmington business, and applied also on all Carolina trade, apparently tends to give those cities a large advantage in Wilmington and Carolina territory generally as compared with East St. Louis and Chicago. Under the method followed in making the rates, Louisville and Cincinnati can bring goods in from St. Louis or Chicago and reship to Carolina territory as cheaply, or nearly as cheaply, as the St. Louis or Chicago merchant can ship through.

Plainly, with a differential rate basis from Louisville or Cincinnati to the Virginia cities on business to Wilmington, amounting to from $8\frac{1}{2}$ to 30 cents less than the local rates to Virginia cities, Wilmington interests are not thereby injured, and any damage to its trade caused by the rate from Louisville or Cincinnati must result from that portion of the through rate which applies from Norfolk or Richmond to Wilmington. But if this constitutes a just relation of rates from Louisville or Cincinnati on Wilmington traffic and freight consigned locally to Norfolk or Richmond, with its difference of from $8\frac{1}{2}$ to 30 cents in favor of through Wilmington freight, the local rates from Chicago to Norfolk or Richmond, and the proportional rates between those points on Wilmington freight must be improperly adjusted, for such local and proportional rates are the same. In lesser degree the same injustice must result from the local and proportional rates from East St. Louis to Norfolk and Richmond, which show much less differences than the local and proportional rates from Louisville and Cincinnati.

These rate disparities are caused by the fact that the rates from Chicago are made by adding the local rates between Chi-

cago and Cincinnati to the proportionals from Cincinnati to Norfolk and Richmond, such combinations equaling in amount the straight rates from Chicago to Richmond or Norfolk. There may be here and there some exceptions to this rule, but the rates shown in these findings indicate that such rule is generally applied.

10. It is claimed for the defense that the rates from the West to Wilmington are lower than those to intermediate points in the Carolinas, that reducing the rates to Wilmington would necessitate like reductions to interior Carolina points, particularly those stations intermediate to Wilmington, and that this would unreasonably diminish the revenues of the roads. Any moderate, or even considerable, reduction in Wilmington rates from the West would still leave the combination to and back from Wilmington higher than the straight rate to the interior destination, except at a few points relatively near to Wilmington.

It is plain, therefore, that the revenues derived by defendants from traffic to interior Carolina stations would not be greatly affected by moderate reductions in the rates from the West to Wilmington. The legality of defendants' rates to these interior localities is not involved in this proceeding.

11. The Cleveland, Cincinnati, Chicago & St. Louis is not a defendant in this case, but it is part of the line formed by the Chesapeake & Ohio and connecting roads to Wilmington, all of which are defendants herein. The record does not show the shares obtained by the defendant roads operating north of the Ohio, or those of other roads north of the river engaged in this traffic to Norfolk and Richmond, except the Cleveland, Cincinnati, Chicago & St. Louis. The through class rates to Wilmington by all the lines are divided so that substantially local rates accrue to the lines north of the Ohio on shipments from Chicago and East St. Louis. The defendant, the Louisville & Nashville, is itself an initial carrier from St. Louis and East St. Louis. It not only carries traffic via Louisville, in connection with the Louisville, Henderson & St. Louis, but also via Nashville and Atlanta. The proportions to Nashville and east of Nashville are given in the testimony, but it does not appear necessary to state them here. Through acquisition of the Louisville, Evansville & St. Louis Railroad the Southern Railway has

also become, since this case was heard, an initial carrier from St. Louis and East St. Louis. With the exception of a short link between Burgin, Ky., and Harriman Junction, Tenn., it now has a through line from St. Louis to Norfolk and Richmond, and to Sanford, which is only about 119 miles from Wilmington, and the road from Burgin to Harriman Junction is that of an affiliated company, the Cincinnati, New Orleans & Texas Pacific. Various proportions of rates are also shown for this line, but a statement of them does not seem requisite in this report.

12. The way the rates are divided between the Chesapeake & Ohio and Cleveland, Cincinnati, Chicago & St. Louis Railways is most instructive upon these rate disparities. The rates from East St. Louis and Chicago to Norfolk, Richmond, Lynchburg and Wilmington are all joint rates, and the rates from Louisville and Cincinnati to Wilmington are also joint rates. From East St. Louis and Chicago to Norfolk, Richmond and Lynchburg the rates are divided between the C. & O. and C. C. C. & St. L. according to percentages based upon the mileage covered by the two roads, after deducting 2 cents arbitrary for the Cincinnati Bridge and 3 cents for transfer as terminal at Norfolk, which go to the C. & O.

The Chesapeake & Ohio, as was claimed on behalf of that company at the hearing, gets more out of Norfolk or Richmond business than it does out of Wilmington traffic; but the divisions also show that its connection, the Cleveland, Cincinnati, Chicago & St. Louis, obtains much more from the Wilmington traffic than it does on shipments to either Norfolk or Richmond. The Cleveland, Cincinnati, Chicago & St. Louis Company performs exactly the same service in the one case as in the other—it brings Chicago or St. Louis freight destined to Wilmington or Norfolk or Richmond to the C. & O. at Cincinnati. According to the testimony, that which was carried from Chicago to Wilmington paid it all the way from 4 to 40 cents, while that which passed from Chicago to Norfolk gave it only from 3 to about 20 cents, and that to Richmond from slightly less than 4 to slightly less than 23 cents. On fifth class, which includes many grocery articles, this difference against Wilmington as compared with Norfolk on the C. C. C. & St. L. amounted to 8.4 cents per 100 pounds. The C. C. C. & St. L. gets something more out of

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Richmond than it does out of Norfolk traffic, and about 80 per cent of the freights by this line to Wilmington are routed via Richmond. Giving the C. C. C. & St. L. the same share on Wilmington traffic that it gets out of Richmond shipments, and the C. & O. the share it obtains from Wilmington business, would produce the following total proportional rates to Richmond on shipments from Chicago to Wilmington:

	Classes.					
	1	2	3	4	5	6
C. C. C. & St. L. Share,	22.9	19.6	14.7	9.8	8.2	6.5
C. & O. Share,	32	28	22	15	12	10
Total Proportional,	54.9	47.6	36.7	24.8	20.2	16.5
Present Proportional,	72	62	47	32	27	22
Difference,	17.1	14.4	10.3	7.4	6.8	5.5

This would make the rates from Chicago to Wilmington (adding the present rates from Richmond to Wilmington) as compared with those now in force, as follows:

	Classes.					
	1	2	3	4	5	6
Present Rates,	122	102	78	58	47	37
New Basis,	104.9	87.6	67.7	50.8	40.2	31.5

Similar changes would occur in commodity rates.

The same change in rates to Wilmington from East St. Louis would result as follows:

	Classes.					
	1	2	3	4	5	6
C. C. C. & St. L. Share,	30.8	25.5	19.9	13.3	11.3	9
C. & O. Share,	32	28	22	15	12	10
Total Proportional,	62.8	53.5	41.9	28.3	23.3	19
Present Proportional,	70	61	47	32	27	22
Difference,	7.2	7.5	5.1	3.7	3.7	3
Present Rates,	120	101	78	58	47	37
New Basis,	112.8	93.5	72.9	54.3	43.3	34

The C. & O.—C. C. C. & St. L. line also participates in rates on provisions, meats, agricultural implements and various other commodities from East St. Louis and Chicago to Boston and New York in conjunction with steamer lines at Norfolk and also with connecting carriers to Baltimore. The C. & O. divisions on this traffic to Boston or New York are greater than those it obtains on Wilmington business, but what divisions accrue therefrom to the C. C. C. & St. L. are not shown.

Conforming to the general rule, the C. & O. has made its

share of the rates on Wilmington traffic less than it gets out of Norfolk or Richmond business. It can do this because it incurs no delivering expense or local billing on Wilmington traffic, and it therefore costs that company less to transport Wilmington traffic as compared with Richmond or Norfolk traffic. The contrary is shown of the C. C. C. & St. L. which, for exactly the same service, gets very much more out of Wilmington traffic than it does out of Norfolk or Richmond business.

The divisions accruing to the C. C. C. & St. L. from the rates to Wilmington on grain and flour from Chicago are not greatly higher than those it obtains on Norfolk and Richmond local shipments. Thus, it gets 3.9 cents on Richmond and 3 cents on Norfolk shipments of grain and flour and 4 cents on Wilmington shipments of those products from Chicago, delivering to the C. & O. at Cincinnati. From East St. Louis it receives on grain and flour 5.5 cents on Richmond and 4 cents on Norfolk shipments and 6½ cents on Wilmington shipments, carrying the freight also to Cincinnati. The great disparities between the C. C. C. & St. L. share of the Norfolk or Richmond rates and its share of the Wilmington rates are found in class rates, as set forth in the tables.

13. The large disparities between the divisions received by the C. C. C. & St. L. road on Norfolk or Richmond traffic on the one hand and Wilmington traffic on the other, on traffic originating north and west of the Ohio River, are accounted for by the fact that roads in that territory obtain substantially local rates to Ohio River gateways on Wilmington shipments of class freights and accept much less for the same service on Norfolk and Richmond business. Why such differences should be enforced is not at all clear. It is claimed, of course, that much stronger competition exists at Richmond and Norfolk than at Wilmington, and it is doubtless true that a much greater volume of traffic is carried by competitive lines to either of those cities than to Wilmington. The situation of Norfolk with reference to New York and other great North Atlantic ports, its vessel service on the Chesapeake Bay to and from Baltimore, the ocean lines from Norfolk to New York and Boston and other northern cities, making it a port of transshipment for through traffic, the numerous rail lines serving its commerce, and the growth of in-

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dustrial enterprise and mercantile interests attained in and about that city, all combine to favor, if not to warrant, the rate basis which now prevails at that point. Railroad competition to Norfolk and more northerly Atlantic ports and competition via the Great Lakes and Erie Canal to New York and thence by coastwise steamers, with the market competition which has grown up as between Norfolk and Baltimore and other Atlantic ports, have caused these low rates to Norfolk, and the C. & O.—C. C. C. & St. L. line must continue to accept them.

Wilmington is situated on the Cape Fear River within a short distance from the sea, having excellent harbor facilities for ocean-going vessels, and about 400 miles by sea south of Norfolk. The same lines from the west that compete for Norfolk traffic are engaged also in Wilmington traffic, and one line of passenger and freight steamers plies regularly between Wilmington and the North. Some export trade is handled there, but it is confined to a few commodities produced in North Carolina and surrounding States. Two large systems reach Wilmington, the Atlantic Coast Line and Seaboard Air Line, and they are interested in bringing traffic to Wilmington and distributing it therefrom as well as in doing a carrying business to and from Norfolk. Nothing but the effect of relatively favorable transportation charges in promoting and sustaining industrial and business enterprise is lacking at Wilmington to enable it to become an active and prosperous rival of Norfolk and other Virginia cities in the competition for trade in that section of the country.

While the rates to Norfolk may be said to result from the competitive conditions at Norfolk, the rates to Wilmington are apparently maintained on a high level in disregard of competitive conditions at that point of a kind ordinarily regarded by carriers as having compelling force. The claim is made by defendants that the present Wilmington rates from the West are based upon water competition to that city. By this is evidently meant the steamship rate from New York and perhaps the competition of sailing vessels. This claim is not sustained by the evidence. As before found, the combined rail and water rates from Chicago via New York to Wilmington are much less than those of the all-rail routes; and apparently

the rates from Norfolk or Richmond to Wilmington on goods from the West are not made to meet possible or actual water competition from Norfolk or Richmond or Baltimore to Wilmington. With water rates on western traffic from New York to Wilmington via the Clyde Line from 7 cents sixth class to 30 cents first class, it cannot be said that the rail rates over the much shorter distance from Norfolk or Richmond to Wilmington, ranging from 15 cents sixth class to 50 cents first class, are based upon any competition by sea. It is doubtless practicable to bring goods from Chicago to Wilmington by the Great Lakes to Buffalo, rail or canal to New York, and ocean-going vessel to Wilmington at even less rates than those advertised by the Pennsylvania-Clyde rail and water line; but this involves transfer at Buffalo and New York and considerable time in transit, and these considerations would tend to discourage shipments that way. That is not the case with the Pennsylvania-Clyde line, which involves only the one transfer and by which the service is conducted through by rail to New York and thence by quick steamship to Wilmington.

The steamship lines from New York and Boston to Norfolk and other ports south, including New Orleans and Galveston, compete actively, in connection with rail lines leading to the West, with all-rail lines for the transportation of traffic between eastern and western points; and no reason appears why the rail and water line via New York to Wilmington is not to be regarded as an active competitor of the all-rail routes for traffic consigned from the West to Wilmington. Some commodities may constitute exceptions because of expense or delay involved in transshipment, and where the difference in commodity rates is small as between the all rail and water and rail lines the item of insurance on shipments by water may have bearing in favor of the all-rail routes. The force of such rail and water line competition is apparently diminished in considerable degree by the favorable all-rail rates to Wilmington from Louisville and Cincinnati. Those rates are lower than the rail and water rates from the cities last mentioned. This whole rate adjustment tends strongly to restrict Wilmington to Louisville and Cincinnati as supply markets, while the rates as adjusted to Norfolk and Richmond encourage the movement of traffic there-

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to from Chicago, St. Louis and other primary markets as well as from Cincinnati and Louisville.

14. The carriers operating the defendant through lines are solvent. The roads affected are either themselves large systems or parts of large systems. The Southern, Louisville & Nashville, Atlantic Coast and Seaboard Air Lines practically cover the southeast. The Chesapeake & Ohio and Norfolk & Western are the principal East and West lines in Virginia and West Virginia, extending into Ohio. The other roads operate in the Middle West north of the Ohio and connect Cincinnati and Louisville with Chicago and St. Louis. A moderate reduction in the rates from the West to Wilmington would not seriously affect the revenues of these defendant lines, even though no great increase in the volume of traffic should result. Considerable testimony was adduced at the hearing concerning the financial condition of the Atlantic Coast Line Railroads, that line being one of the two delivering western freight in Wilmington. This testimony related to the organization and growth of the Coast Line System and its acquirement of the Wilmington & Weldon property, the dilapidated condition of that property as a result of the Civil War, the dividends paid and stock or certificates of indebtedness issued in the nature of free grants to stockholders. Such showing was to the effect that the Coast Line and its constituent road, the Wilmington & Weldon, have become extremely valuable properties which yield large returns, not merely upon the original investment, but upon the present outstanding stock, after meeting current liabilities and interest due upon the funded indebtedness. This showing is supported by the annual reports of the system, to which recourse for authentic figures as given below has been had.

The Atlantic Coast Line lies in Group IV of United States railways as classified in the reports of the Commission on Statistics of Railways. For the year ending June 30, 1899, the proportion of operating expenses to earnings of the Atlantic Coast Line was 55.88 per cent. The proportion of expenses to earnings for all roads in that group in that year was 64.27 per cent. The proportion for the whole United States was 65.24 per cent. The proportion of operating expenses to earnings of the Atlantic Coast Line for that year was less than that for any one of the

10 groups of railways in the United States. It was among the lowest of such percentages found for any of the larger systems. Of the 144 roads mentioned as in Group IV, its gross earnings, \$6,389,612, and its freight earnings, \$4,129,903, were greater than any except the Chesapeake & Ohio, Norfolk & Western and Southern systems. Its average rate per ton per mile on all traffic was 1.477 cents, while that for all roads in Group IV was .594 of a cent, and for all roads in the United States .724 of a cent. Its net earnings were \$2,819,133. Its capitalization was \$13,026,200 stock and \$21,482,500 funded debt, giving a total of \$34,508,700, amounting on 1701 miles owned to \$20,284 per mile of line. The average capitalization for all roads in Group IV was \$49,384 per mile of line, and for all roads in the United States it was \$60,556 per mile of line. The capitalization per mile of the Atlantic Coast Line was less than that given for any one of the 10 groups in the United States. In Group IV, the Chesapeake & Ohio was capitalized per mile at \$102,780, the Norfolk & Western at \$89,062 and the Southern at \$74,929. The Atlantic Coast Line paid dividends of \$795,841 on common stock at a rate of 7.14 per cent, and \$113,280 on preferred stock at a rate of 6 per cent, interest on funded debt amounting to \$1,047,560 at an average rate of 4.88 per cent, giving a total of dividends and interest on funded debt of \$1,956,681, and an average rate of 5.67 per cent thereon.

On April 23, 1900, the companies composing the Atlantic Coast Line Association were consolidated under the name of the Atlantic Coast Line R. R. Co., and the present mileage operated is 1,795.99 miles. The following figures are taken from the report of the same company for the year ending June 30, 1900. The capital stock outstanding is \$15,890,200 common and \$18,390,300 preferred, a total of \$34,280,500. This nearly equals the entire capitalization, including funded debt, of the old system. This stock was issued by the new company to the holders of the stock in the old companies, the amount of which is stated above. The funded debt of the new company is \$24,426,500, on which \$930,410.10 interest at rates of from 4 to 7 per cent accruing during the year was paid. The total capitalization of the consolidated company amounts to \$34,306 per mile of line. This capitalization exceeds that of the old association by \$14,022

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per mile, disregarding the slight increase in mileage. The present capitalization is still much less than the average for all roads or for those in Group IV as given above. The gross earnings were \$7,585,740.25, and operating expenses \$4,310,592.94, giving an income of \$3,275,147.31. After paying interest and other deductions from income the net income was \$2,152,406.57. This surplus added to \$192,230.10 remaining from the year previous amounts to \$2,344,636.67. No dividends are reported. The large surplus shown for the year, \$2,152,406.57, would afford a dividend of over 6 per cent upon the whole amount of the stock. The percentage of operating expenses to earnings was 56.83, a slight increase above that for the year previous.

Referring again to the funded debt, it appears that this item includes \$2,500,000 as "Wilmington & Weldon, Certificates of Indebtedness," bearing 7 per cent interest, and it is stated that no cash was realized from these certificates. The funded debt statement also includes another item reading "Atlantic Coast Line R. R. Co. Certificate of Indebtedness, \$3,000,000," rate of interest 4 per cent, from which no cash was realized.

This statement as to the prosperous financial condition of the Coast Line does not warrant a reduction of its charges in this case below what would be reasonable, taking all the conditions pertaining to the transportation and value of the service into account. Such showing does indicate, however, that its revenues as a system are amply sufficient to permit such reduction if its rates or charges are found excessive in any degree.

15. The rates charged by the Atlantic Coast Line on western traffic received by it for delivery in Wilmington at the time of the complaint and when the case was heard were unreasonable for the service rendered. These rates for the distance of 245 miles from Richmond to Wilmington produced rates per ton per mile of 4.49 cents first class, 2.04 cents per ton per mile fifth class, and 1.387 cents per ton per mile sixth class. It obtained a rate per ton per mile on grain and flour in carloads of 8.163 mills. The class rates were from 70 to 100 per cent more than those charged by the C. & O. as its proportions from Cincinnati to Richmond, over $2\frac{1}{2}$ times the distance of the Coast Line from Richmond to Wilmington. The grain and flour rate of the Coast Line was the same as that of the C. & O. over the

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distances named. The excessive character of its rates to Wilmington is recognized in the reductions made by the Coast Line, as noted in the fifth finding, amounting to from 2 cents on sixth class to 9 cents on third class and 5 cents first class. These reductions were substantial in amount, but it is not apparent that they operated to make the particular rates altogether reasonable.

16. The rates from Cincinnati and Louisville to Wilmington, taking them as a whole, are not found to be unreasonable or unjust as compared with those from the same cities to Norfolk or Richmond; and this being the fact as to such rates as a whole, it cannot be found that the proportions or shares of which they are composed are unreasonable or unjust *as applied to such traffic*. The evidence fairly indicates that the greatly lower proportional rates from Cincinnati and Louisville to Richmond and Norfolk than the locals between those points, and the reductions already made in the rates from Richmond and Norfolk to Wilmington, render the rate adjustment from those Ohio River points to Wilmington, Richmond and Norfolk relatively reasonable.

17. The rates from Chicago, St. Louis and East St. Louis and other points north and west of the Ohio River to Wilmington are unreasonable and unjust, and, as compared with the rates from the same shipping points to Norfolk, they operate to subject Wilmington as a locality, the various descriptions of traffic shipped thereto from such northern and western points of origin, and merchants and dealers doing business in Wilmington, to undue and unreasonable prejudice and disadvantage, and afford wrongful preferences and advantages to Norfolk as a locality, the traffic destined thereto and merchants and dealers engaged in trade in that city. The same finding applies to the rate adjustment as between Richmond and Wilmington, the Norfolk rates from the West being in force to Richmond.

The carriers north of the Ohio River by accepting less than their local charges on the traffic destined to Norfolk and Richmond and enforcing greatly higher charges, amounting in most instances to their local rates, for identically the same service, are largely responsible for this resulting discrimination against Wilmington, but it is not found that such carriers are altogether

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in fault; the rates south of Norfolk and Richmond on this traffic are also upon a high basis. For such considerable distances, however, as 1,000 to 1,300 or more miles, as the various lines or routes to Wilmington and Norfolk are located, the rate changes necessary to be made in this case are primarily for the carriers composing the through routes to consider and distribute among themselves as the particular conditions of through line carriage and traffic interchange may require.

18. The remedy for the present wrongful and prejudicial rate adjustment from Chicago and St. Louis (East St. Louis) is indicated by the existing rates from Cincinnati or Louisville to Norfolk or Richmond and Wilmington, which have not been found unreasonable or prejudicial to Wilmington. The rates from Cincinnati to Wilmington are the following percentages of the rates from Cincinnati to Norfolk: First class—132; second class—127; third class—131; fourth class—149; fifth class—139; sixth class—135. The average percentage is a fraction over 135 per cent.

The distance to Norfolk from Chicago is less than the distance to Norfolk from St. Louis by about 70 miles, but to Wilmington the distance is less from St. Louis than from Chicago via the short lines by at least 30 miles. The carriers make the class rates to Wilmington substantially the same from both Chicago and St. Louis, while the rates to Norfolk are less from Chicago than from St. Louis. These lower rates from Chicago to Norfolk result from application to Norfolk of the trunk line rates to Baltimore. The disparities in distance above noted and the more southerly location of Wilmington afford a reason for applying a somewhat different adjustment to Wilmington from Chicago and St. Louis, and it does not appear that the carriers' present plan of making practically the same class rates from those points to Wilmington is unjust. Neither does it appear that continuing the present practice of charging the same rates from St. Louis as from East St. Louis to Wilmington, while the rates from St. Louis to Norfolk are the usual bridge arbitraries higher, would be unfair.

The rates from East St. Louis (the point from which St.

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Louis rates are figured) constitute the fair basis of readjustment. Rates from East St. Louis and Chicago to Wilmington which are the foregoing percentages of present rates from East St. Louis to Norfolk, discarding fractions below one-half and counting those above one-half as one, would be as follows:

		Cents per 100 lbs.				
Classes	1	2	3	4	5	6
Rates	111	92	72	56	44	35

Such rates, however, entail apparently unnecessary reductions upon the higher classes which embrace commodities having comparatively high value and affording relatively greater margins of profit; and under all the circumstances it is found that making the rates to Wilmington from East St. Louis and Chicago according to the average percentage relation (135 per cent) of the Cincinnati-Norfolk and Cincinnati-Wilmington rates would be fair and reasonable. Such per cent of present East St. Louis-Norfolk rates indicates rates from East St. Louis and Chicago to Wilmington as follows:

		Cents per 100 lbs.				
Classes	1	2	3	4	5	6
Rates	113	98	74	51	43	35

Compared with the new rates which, as shown in finding 12, would be produced by the Cleveland, Cincinnati, Chicago & St. Louis accepting its share of Norfolk rates on Wilmington business, these rates are the same on classes 1 and 5, higher on classes 2, 3 and 6, and lower on class 4. Basing the remedy in this case upon the difference in revenue obtained by the Cleveland, Cincinnati, Chicago & St. Louis or other carriers north of the Ohio would leave out of consideration the differences in the character and length of the service. These elements are necessarily taken into account if the same general percentage of rates to Wilmington and Norfolk applying from Cincinnati and Louisville is used to determine the rate relations to Wilmington and Norfolk from East St. Louis and Chicago.

Rates from Chicago and East St. Louis to Wilmington 135
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per cent of the rates from East St. Louis to Norfolk would compare with the rail and water line rates as follows:

Classes.....	1	2	3	4	5	6
From Chicago — higher than rail and water line ..	8	8	6	1	6	3
From East St. Louis — lower than rail and water line...	4	2.5	2	4.5		1
From East St. Louis — higher than rail and water line....					1	

Such rates would still leave the all-rail rates from Chicago higher than those by the rail and water line, and the all-rail rates from East St. Louis, while slightly lower than those charged over the rail and water route, are only made so by re-adjusting the rates in accordance with rate relations prevailing from Cincinnati to Norfolk and Wilmington. As shown in the sixth finding, the rail rates from Cincinnati to Wilmington are all lower than those by the rail and water line.

As before found, the rates on packing-house products to Wilmington have been made by the carriers an exception to the general rate adjustment. The rate on that commodity from East St. Louis to Wilmington is 36 cents and to Norfolk it is 32 cents. The exceptional conditions which require the making of this relatively low rate to Wilmington are not shown, and the finding that Wilmington rates from St. Louis and Chicago would be just and reasonable if made 135 per cent of East St. Louis-Norfolk rates does not apply to the packing-house rate or that on any other commodity which may now, on account of special circumstances, take a rate to Wilmington below that which would be produced on that percentage basis of adjustment. That finding would apply, of course, if the exceptional circumstances demanding a lower rate on such commodities should cease to exist.

This 135 per cent basis if put in force by lowering the rates to Wilmington would result in reductions from present class rates as follows:

Classes	1	2	3	4	5	6
From East St. Louis ..	7	3	4	7	4	2
From Chicago . . .	9	4	4	7	4	2

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CONCLUSIONS.

The conclusions to be announced have already been indicated. That Wilmington has been laboring under most serious disadvantages in her competition with Norfolk and other Virginia cities taking Norfolk rates for the wholesale trade of interior Carolina towns, and that these prejudices have resulted from large disparities in rates from the West to Wilmington and Norfolk not warranted by the differences in distance, either by the short lines, or by any of the routes over which the traffic passes, was plainly apparent at the hearing, and that impression is confirmed by our subsequent examination of the record. Strongly persuasive as such showing may be, it is not sufficient in itself to constitute the basis of a decision requiring the carriers to readjust their charges. The evidence must also demonstrate such prejudices and disadvantages to be undue and unreasonable under all the material circumstances of the case. Preferences existing under relative rates to competing localities must be shown to result from the wrongful action of the carrier or carriers before it or they can be required to readjust the rates in question. For this reason, and because of the complex and somewhat confusing nature of the rate adjustments from the different western points of origin, a more full and detailed statement of the material facts has been deemed necessary in this case than would be considered requisite in a controversy of the ordinary character. The situation is fully set forth in the findings, and little if any comment thereon appears to be required.

Although the object on the part of Wilmington is to participate with Norfolk and other rival cities in Virginia in the jobbing trade to Carolina towns, the question for us, it should be borne in mind, is what is the proper relation of rates to Wilmington and Norfolk and other Virginia cities from western points of origin. After giving the case most careful study and keeping in view the rights and just interests of all concerned we see no escape from the conclusion that the present adjustment (which operates largely to deprive Wilmington as a competing point for wholesale distribution of the benefits of such great primary markets as Chicago and St. Louis and limits her to such intermediate points of supply as Cincinnati and Louisville, 9 I. C. C. REP.

from which the related rates appear to be fair and reasonable) subjects Wilmington to prejudices and disadvantages which are in substantial degree undue and unreasonable; that the carriers operating the defendant through lines are to that extent responsible; and that the regulation provided for in the statute should be applied to remove and prevent those wrongs.

The rates from Cincinnati and Louisville to Norfolk are much lower than those from St. Louis and Chicago to Norfolk, and the competitive conditions governing the rates from Cincinnati and Louisville appear to be of the same general character as those which apply to rates from Chicago and St. Louis. The same observation is true of rates to Wilmington from Cincinnati, Louisville, Chicago and St. Louis. With no substantial difference therefore in the really forceful conditions governing rates from these points of supply, except that of distance which favors Cincinnati and Louisville, it is believed upon the whole that what constitutes just rate relations from Cincinnati and Louisville to Norfolk and Wilmington would be a fair basis of relative rates from St. Louis and Chicago. We think that basis should be adopted with the modification in favor of the carriers that the readjustment may be made on the basis of East St. Louis rates, and the established practice of charging practically the same rates from St. Louis and Chicago to Wilmington continued. As indicated in the findings, we are led to allow this modification on account of the more southerly location of Wilmington than Norfolk, which operates to bring Wilmington nearer to St. Louis than to Chicago, while the contrary is true of Norfolk, and with reference to rates prevailing from Chicago and East St. Louis to Wilmington by the rail and water route (Pennsylvania-Clyde line) via New York.

A strict application of this rule of adjustment would necessitate rates from St. Louis and East St. Louis to Wilmington (and therefore from Chicago) which would be, for the various kinds of traffic, percentages of East St. Louis-Norfolk rates equal to the actual percentages Cincinnati-Wilmington rates bear to Cincinnati-Norfolk rates, and if the carriers prefer to adopt that course the requirements of the law would appear to be satisfied. But to avoid what seem to be unnecessary reductions of rates on higher class articles the average percentage of 135 per cent

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has been found and is believed, under all the circumstances, to be equitable.

It is our conclusion that the defendant carriers should cease and desist from maintaining and enforcing the present relations of class rates to Wilmington and Norfolk from St. Louis and East St. Louis and Chicago and from charging and demanding more than relatively reasonable and just charges to Wilmington from such points of shipment, which are herein found and determined to be 135 per cent of the rates contemporaneously in force from East St. Louis to Norfolk, and which will result from applying relations of rates substantially similar to those in effect from Cincinnati or Louisville to Wilmington and Norfolk. The same ruling applies to commodity rates which are greater than would be found upon such percentage basis, and will apply as a limitation upon all commodity rates. Placing the rates upon such percentage basis apparently obviates a specific requirement that the proportional rate to Norfolk or Richmond from St. Louis or Chicago on Wilmington traffic should not exceed the local or straight rate under the Official Classification from St. Louis or Chicago to Norfolk or Richmond, but if in any instance this may not be the case, the tariffs should contain a definite notation to that effect.

Issuance of order will be suspended for 40 days from date of service upon the carriers of this report to enable them to make the necessary revision of tariffs applying from St. Louis, East St. Louis, Chicago and points basing thereon, and they are directed to file a report of their action hereunder within that period. Upon the expiration of that time such further action will be had as may appear to be required.

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THE MAYOR AND COUNCIL OF TIFTON, GA.,

v.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY; THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; THE WESTERN & ATLANTIC RAILROAD COMPANY; THE CENTRAL OF GEORGIA RAILWAY COMPANY; THE GEORGIA & ALABAMA RAILWAY COMPANY; THE GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY; THE TIFTON & NORTHEASTERN RAILROAD COMPANY; THE SAVANNAH, FLORIDA & WESTERN RAILWAY COMPANY, and THE BRUNSWICK & WESTERN RAILROAD COMPANY.

Decided March 27, 1902.

1. Neither the absence nor presence of competition by carriers alone, nor the extent of its operation measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all.
2. It is the duty of the Commission to consider all circumstances and conditions that reasonably apply to the situation, the legitimate interests of the carrying companies as well as those of traders and shippers and the welfare of the communities at localities where the goods are delivered as well as that of communities in the places of shipment (*Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 I. C. C. Rep. 405, 16 Sup. Ct. Rep. 666), and to give effect to this rule a much broader view must be taken than that of the competition of carriers alone.
3. Freight passes from New York and other eastern cities over water and rail lines via Savannah to Tifton, Ga., and through Tifton to Albany, Ga. Freight also passes by all rail routes from Cincinnati, Louisville, Evansville and Nashville to Tifton and through Tifton to Valdosta, Ga. The circumstances and conditions at Tifton are substantially similar to those at Albany on traffic from the east, and the circumstances and conditions at Tifton are substantially similar to those at Valdosta on traffic from the north and west. *Held*, That freight rates from New York and other eastern cities over such water and rail lines to Tifton which are higher than those to Albany, the longer distance point, are in violation of the Act to regulate commerce; that freight rates from Cincinnati, Louisville, Evansville and Nashville which are higher to Tifton than those to Valdosta, the longer distance point, are

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in violation of the Act to regulate commerce; that freight rates to Tifton which are less than those to Albany or Valdosta from the points named are not authorized to be increased by this decision; that the present rates enforced for the transportation of sugar from New Orleans to Tifton are unjust and unduly prejudicial to Tifton, and such rates to be lawful should not exceed the rates on the same commodity from New Orleans to Valdosta.

F. G. Boatright, for complainant.

H. H. Tift, for the Tifton & Northeastern R. R. Co.

Ed. Baxter, for the other defendants.

REPORT AND OPINION OF THE COMMISSION.

STATEMENT OF THE ISSUES.

CLEMENTS, *Commissioner*:

Complainants allege that defendants are common carriers engaged in the transportation of property between the points hereinafter stated; that they are subject to the Act to regulate commerce; that they violate the same in charging higher freight rates, first, from Nashville, Tenn., Cincinnati, O., Louisville, Ky., and Evansville, Ind., to Tifton, Ga., than from the same points to Albany, Americus, Dawson, Cordele, and Valdosta, Ga.; second, from New York City to Tifton than to Albany, Americus, Dawson, Cordele, and Macon, Ga.; third, on sugar from Cincinnati, O., Louisville, Ky., and Evansville, Ind., to Tifton, than to Brunswick, Ga.; fourth, on sugar from New Orleans, La., to Tifton than to Americus, Dawson, Cordele, and Macon, Ga.; fifth, on bran, farm wagons in carloads, sash, doors, and blinds from Cincinnati, O., Louisville, Ky., and Evansville, Ind., to Tifton than to Brunswick, Ga., and, sixth, on white lead in carloads from St. Louis, Mo., to Tifton than to Brunswick, Ga.

The defendant the Tifton & Northeastern Railroad Company answering "admits each and every allegation of the said petition to be true," but avers that it is not responsible for the rates complained of, because its road is but a small part of the through lines leading to Tifton and it has no voice in making the rates complained of.

The other defendants admit that they are subject to the Act to regulate commerce, and that the rates and distances as stated by complainant are substantially correct; but they deny generally the other material allegations of the complaint so far as the same apply to their respective lines.

The rates involved were stated in the complaint as follows:

From New York N. Y., to Tifton, Ga., (rail and water) by way of Savannah.

1	2	3	4	5	6	A	B	C	D	Special Iron
1.36	1.14	97	77	62	50	48	48	38	37	C. L. 39.....L. C. L. 39

From New York, N. Y., to Macon and Albany, Ga. (Rail and water.)

1	2	3	4	5	6	A	B	C	D	Special Iron
1.09	96	83	70	59	48	34	47	35	34	C. L. 34.....L. C. L. 40

From New York, N. Y., to Americus, Dawson and Cordele, Ga. (Rail and water.)

1	2	3	4	5	6	A	B	C	D	Special Iron
1.14	98	86	73	60	48	36	48	40	39	C. L. 34.....L. C. L. 40

From Cincinnati, O., Louisville, Ky., and Evansville, Ind., to Tifton, Ga.

1	2	3	4	5	6	A	B	C	D	Special Iron
1.59	1.35	1.22	1.05	86	69	51	54	40	35	C. L. 45.....L. C. L. 51

From Cincinnati, O., Louisville, Ky., and Evansville, Ind., to Albany, Americus, Dawson, and Cordele, Ga.

1	2	3	4	5	6	A	B	C	D	Special Iron
1.27	1.09	96	81	67	55	37	41	32	28	C. L. 36.....L. C. L. 44

From Cincinnati, O., Louisville, Ky., and Evansville, Ind., to Valdosta, Ga. ..

1	2	3	4	5	6	A	B	C	D	Special Iron
1.56	1.33	1.16	92	78	62	57	46	35	32	C. L. 44.....L. C. L. 50

From Nashville, Tenn., to Tifton, Ga.

1	2	3	4	5	6	A	B	C	D	Special Iron
1.24	1.08	97	83	68	56	43	46	33	28.5	C. L. 40.....L. C. L. 48

From Nashville, Tenn., to Albany, Americus, Cordele, and Dawson, Ga.

1	2	3	4	5	6	A	B	C	D	Special Iron
93	80	71	60	49	42	29	33	25	21	C. L. 28.....L. C. L. 36

From Nashville, Tenn., to Valdosta, Ga.

1	2	3	4	5	6	A	B	C	D	Special Iron
1.33	1.13	98	75	64	51	49	38	29	26	C. L. 39.....L. C. L. 45

Rates on Sugar from Cincinnati, Louisville and Evansville to—

	Cents.
Tifton.....	69
Albany, Americus, Dawson, Cordele }	37
Brunswick	34

Rates on Farm Wagons in carloads from Cincinnati, Louisville, and Evansville to—

	Cents.
Tifton	69
Brunswick	30

Rates on sash, doors and blinds in carloads from Cincinnati, Louisville, and Evansville to—

	Cents.
Tifton	69
Brunswick	28

Rates on bran in carloads of 25,000 pounds or more from Cincinnati, Louisville, and Evansville to—

	Cents.
Tifton	35
Brunswick	23
Albany	28

Rates on White Lead in carloads of 30,000 pounds or more from St. Louis, Missouri, to—

	Cents.
Tifton	98
Brunswick	53

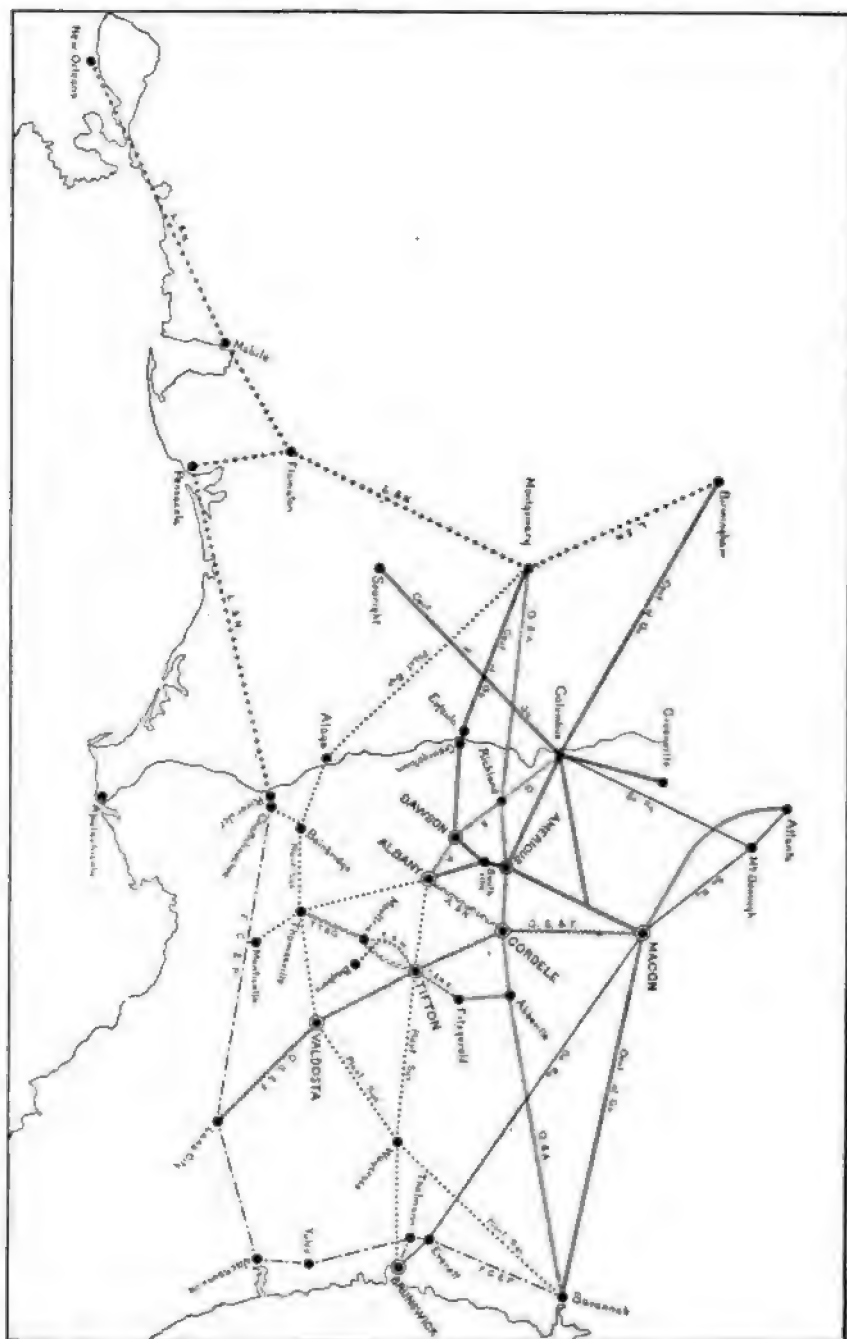
Rates on Sugar from New Orleans, La., to—

	C. L.	L. C. L.
Tifton	32	35
Albany	18	21
Americus		
Dawson		
Cordele		
Macon		

FINDINGS OF FACT.

The facts material to the issues presented found upon the hearing of the same are as follows:

The complainant is a municipal corporation organized and existing under the laws of the State of Georgia. The following diagram indicates the situation of Tifton and the other Georgia points mentioned in the complaint and the lines leading to each of them.



THE MAYOR AND COUNCIL OF TIFTON, GA.,

v.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY; THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; THE WESTERN & ATLANTIC RAILROAD COMPANY; THE CENTRAL OF GEORGIA RAILWAY COMPANY; THE GEORGIA & ALABAMA RAILWAY COMPANY; THE GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY; THE TIFTON & NORTHEASTERN RAILROAD COMPANY; THE SAVANNAH, FLORIDA & WESTERN RAILWAY COMPANY, and THE BRUNSWICK & WESTERN RAILROAD COMPANY.

Decided March 27, 1902.

1. Neither the absence nor presence of competition by carriers alone, nor the extent of its operation measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all.
2. It is the duty of the Commission to consider all circumstances and conditions that reasonably apply to the situation, the legitimate interests of the carrying companies as well as those of traders and shippers and the welfare of the communities at localities where the goods are delivered as well as that of communities in the places of shipment (*Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 I. C. C. Rep. 405, 16 Sup. Ct. Rep. 666), and to give effect to this rule a much broader view must be taken than that of the competition of carriers alone.
3. Freight passes from New York and other eastern cities over water and rail lines via Savannah to Tifton, Ga., and through Tifton to Albany, Ga. Freight also passes by all rail routes from Cincinnati, Louisville, Evansville and Nashville to Tifton and through Tifton to Valdosta, Ga. The circumstances and conditions at Tifton are substantially similar to those at Albany on traffic from the east, and the circumstances and conditions at Tifton are substantially similar to those at Valdosta on traffic from the north and west. *Held*, That freight rates from New York and other eastern cities over such water and rail lines to Tifton which are higher than those to Albany, the longer distance point, are in violation of the Act to regulate commerce; that freight rates from Cincinnati, Louisville, Evansville and Nashville which are higher to Tifton than those to Valdosta, the longer distance point, are

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in violation of the Act to regulate commerce; that freight rates to Tifton which are less than those to Albany or Valdosta from the points named are not authorized to be increased by this decision; that the present rates enforced for the transportation of sugar from New Orleans to Tifton are unjust and unduly prejudicial to Tifton, and such rates to be lawful should not exceed the rates on the same commodity from New Orleans to Valdosta.

F. G. Boatright, for complainant.

H. H. Tift, for the Tifton & Northeastern R. R. Co.

Ed. Baxter, for the other defendants.

REPORT AND OPINION OF THE COMMISSION.

STATEMENT OF THE ISSUES.

CLEMENTS, *Commissioner*:

Complainants allege that defendants are common carriers engaged in the transportation of property between the points hereinafter stated; that they are subject to the Act to regulate commerce; that they violate the same in charging higher freight rates, first, from Nashville, Tenn., Cincinnati, O., Louisville, Ky., and Evansville, Ind., to Tifton, Ga., than from the same points to Albany, Americus, Dawson, Cordele, and Valdosta, Ga.; second, from New York City to Tifton than to Albany, Americus, Dawson, Cordele, and Macon, Ga.; third, on sugar from Cincinnati, O., Louisville, Ky., and Evansville, Ind., to Tifton, than to Brunswick, Ga.; fourth, on sugar from New Orleans, La., to Tifton than to Americus, Dawson, Cordele, and Macon, Ga.; fifth, on bran, farm wagons in carloads, sash, doors, and blinds from Cincinnati, O., Louisville, Ky., and Evansville, Ind., to Tifton than to Brunswick, Ga., and, sixth, on white lead in carloads from St. Louis, Mo., to Tifton than to Brunswick, Ga.

The defendant the Tifton & Northeastern Railroad Company answering "admits each and every allegation of the said petition to be true," but avers that it is not responsible for the rates complained of, because its road is but a small part of the through lines leading to Tifton and it has no voice in making the rates complained of.

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the other Georgia points named in the complaint are as follows: Americus, northwesterly, 71 miles; Dawson, westerly, 63 miles; Albany, westerly, 41 miles; Cordele, northerly, 40 miles; Valdosta, southerly, 46 miles; Brunswick, easterly, 129 miles; and Macon, northerly, 105 miles.

The rates involved in this case are for all-rail transportation, except those from New York which are shown to apply by ocean and rail, that is, by ocean to Savannah, and thence by rail to the destinations indicated over one or more of the defendant lines. The distance by ocean from New York to Savannah is about 750 miles, and the distances and routes from Savannah to said destinations are as follows:

To Tifton, via G. & A. and T. & N. E.....	186 miles.
via G. & A. and G. S. & F.....	208 "
via S. F. & W. and B. & W.....	168 "
To Americus, via C. of G.....	262 "
via G. & A.	199 "
To Dawson, via C. of G.....	289 "
via G. & A.....	253 "
via S. F. & W., B. & W. and G. & A.....	231 "
To Albany, via C. of G.....	298 "
via G. & A.	276 "
via S. F. & W. and B. & W.....	209 "
To Cordele, via G. & A.....	168 "
via C. of G. and G. S. & F.....	277 "
To Macon, via C. of G.....	191 "

The short-line distance from Savannah to Tifton is less than that to any of the other points except Cordele, which is the same as to Tifton.

Traffic from the east transported to Albany via the Savannah, Florida & Western and Brunswick & Western is hauled through Tifton. The length of the haul in that case is 209 miles between Savannah and Albany, while the distance from Savannah to Tifton over this route is only 168 miles, and the shorter distance to Tifton is included in the longer one to Albany.

Traffic transported from Nashville, Cincinnati, Louisville, Evansville or St. Louis to any of the Georgia points in question would naturally pass through either the Atlanta, Birmingham, or Montgomery gateway, but the short line would be via Atlanta. By this way the distance to Tifton would be greater than to any of the other Georgia points except Albany and Valdosta. The distance to Tifton would be less than to Albany by

2 miles, less than to Valdosta by 46 miles, and the shorter haul to Tifton would be included in the longer one to Valdosta.

Shipments from New Orleans to Tifton, Albany, Dawson, Americus, Cordele, or Macon would naturally pass through the Montgomery gateway, which is the short-line route, but when the destination is Valdosta the short-line would be by River Junction. By this way the short-line distance to Tifton would be greater than to any of the other Georgia points except Macon. The distance would be less to Tifton than to Macon by five miles.

The short-line distances referred to above are tabulated as follows:

From	To						
	Tifton. Miles.	Albany. Miles.	Dawson. Miles.	Americus. Miles.	Cordele. Miles.	Valdosta. Miles.	Macon. Miles.
Nashville	482	484	475	448	442	528	377
Cincinnati	669	671	650	626	629	715	564
Louisville	643	645	636	609	603	689	538
Evansville	637	639	630	603	597	683	532
St. Louis	803	805	796	769	763	849	698
New Orleans	510	469	447	462	493	507	515

Tifton was incorporated in December, 1890. At that time it had about 100 inhabitants. In 1900 its population within the corporate limits, according to the United States Census, was 1,384, but the testimony shows that with its suburbs, Edgewood, Phillipsburg and Unionville, the population at the time of the hearing was from 2,500 to 2,800. At that time Tifton had 35 retail establishments, one wholesale grocery store, a cotton-gin, saw-mill, planing mill, canning factory, barrel factory, foundry and machine shop, and a cotton factory in process of construction.

The populations of the other towns with which Tifton has been compared were in 1900, according to the United States Census, as follows: Americus, 7,674; Dawson, 2,926; Albany, 4,606; Cordele, 3,473; Valdosta, 5,613; Brunswick, 9,081; and Macon, 23,272.

Some tonnage statements were put in evidence by defendants. For the year ending May 31, 1900, deliveries in tons were made as follows:

By	At						
	Tifton.	Albany.	Valdosta.	Macon.	Americus.	Dawson.	Cordele.
Plant System ..	9,177	29,281	22,249				
G. S. & F.....	7,315		36,685	59,576			24,954
C. of G.		22,409		163,440	33,483	14,903	
T. & N. E.....	31,793						

And for the three months ending August 31, 1900.

By	At						
	Tifton.	Albany.	Valdosta.	Macon.	Americus.	Dawson.	Cordele.
Plant System....	2,288	7,293	4,537				
G. S. & F.	1,758		2,581	12,463			6,642
C. of G.		7,225		33,483	7,669	5,358	
T. & N. E.	7,396						

The rates were substantially as stated in the complaint when it was filed, except that the sugar rates from New Orleans to Tifton were 34 cents for carloads and 37 cents for less than carloads, and to Albany, Americus, Dawson, Cordele and Macon they were 23 cents for carloads and 26 cents for less than carloads. Some changes have since been made. They have been increased as follows:

		Increase in cents per 100 pounds.													
From	To	Classes.													
		1	2	3	4	5	6	A	B	C	D	E	H	F	per bbl.
Macon															3
Albany ..		5	2	3	3	1	1	2	1	5	5	6	8	10	3

From Nashville To	Rates in cents per 100 pounds.			
	Classes.			Iron,
	1	2	4	L. C. L.
Albany				6*
Tifton	1	1	1	

*On special iron articles only.

From New Orleans To	Sugar,	
	C. L.	Sugar, L. C. L.
Tifton	3	3

They have been reduced as shown below :

From New York To	Reduction in cents per 100 pounds.													
	Classes.													F
	1	2	3	4	5	6	A	B	C	D	E	H	per bbl.	Iron, C.L.
Tifton	8	6	5	4	3	2	5	2	2	2	3	4	4	2½

From Cincinnati, Louisville and Evansville To	Sugar,	Sash, Doors and Blinds, C. L.	Farm Wagons,	Bran, C. L.	Iron, C. L.	Iron, L. C. L.
Tifton	18	18	14	5.6	¾	¾
From Nashville To Tifton					2¾	2½

The rates now in force are as follows:

From New York via ocean and rail To		Rates in cents per 100 pounds.																Iron C.L.	Iron L.C.L.
		Classes.																	
1	2	3	4	5	6	A	B	C	D	E	H	F							
Tifton. . .	128	108	92	73	59	48	43	46	36	35	64	73	66	36½	36½				
Albany. . .	114	98	86	73	60	49	36	48	40	39	58	68	78	37	43				
Americus. .	114	98	86	73	60	49	36	48	40	39	58	68	78	37	43				
Dawson. . .	114	98	86	73	60	49	36	48	40	39	58	68	78	37	43				
Cordele. . .	114	98	86	73	60	49	36	48	40	39	58	68	78	37	43				
Macon . . .	109	96	83	70	59	48	34	47	35	34	52	60	68	37	43				

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Rates in cents per 100 pounds.																				
Classes.																				
From Cincinnati, Louisville and Evansville To	1	2	3	4	5	6	A	B	C	D	E	H	F per bbl.	Sugar.	Farm Wagons, C. L.	Sash, Doors, and Blinds, C. L.	Bran, C. L.	Iron, C. L.	Iron, C. L.	White Lead, C. L.
Albany.....	127	109	96	81	67	55	37	41	32	28	60	65	56	37	55	55	28	36	44	67
Americus.....	127	109	96	81	67	55	37	41	32	28	60	65	56	37	55	55	28	36	44	67
Dawson.....	127	109	96	81	67	55	37	41	32	28	60	65	56	37	55	55	28	36	44	67
Cordale.....	127	109	96	81	67	55	37	41	32	28	60	65	56	37	55	55	28	36	44	67
Valdosta.....	156	133	116	92	78	62	57	46	35	32	70	78	63	51	46	44	29	44	50	78
Brunswick.....	...	...	...	...	...	...	...	...	...	...	...	...	...	34	30	28	28	...	...	...
Tifton.....	169	135	122	105	86	69	51	64	40	35	71	80	71	51	55	51	29.4	44%	50%	86

Rates in cents per 100 pounds.															
Classes.															
From	1	2	3	4	5	6	A	B	C	D	E	H	F	Iron,	White
Nashville													per	O. L.	Lead,
To													bbl.	O. L.	O. L.
Albany															
Americus	93	80	71	60	49	42	29	33	25	21	45	48	42	28	36
Dawson	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Cordale	133	113	98	76	64	51	49	38	29	26	60	68	51	39	45
Valdosta	125	109	97	84	68	56	43	46	33	28½	61	70	66½	37½	45½
Tifton	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

From New Orleans To	Sugar, L.C.L.	Sugar, C.L.
Albany, Americus, Dawson, } Cordele, Macon, Tifton.	26 40	23 37

From St. Louis To	White Lead, L.C.L.	White Lead, C.L. of 30,000 lbs.
Brunswick	57	53
Tifton.	98	..

As appears by the foregoing statements, the rates from New York are lower to Tifton than to Albany on classes 5, 6, B, C, D, F, and on iron in carloads and less, the rates from Cincinnati, Louisville and Evansville are lower to Tifton than to Valdosta on class A, and the rates from Nashville are lower to Tifton than to Valdosta on classes 1, 2, 3, A and carload iron. While the evidence does not refer specifically to these particular rates as being made by using the lowest combinations of rates to and from basing points, it does indicate that rates generally to Tifton are determined in that way. Rates from New York to Tifton differ from those to Cordele, Albany, Americus and Dawson as follows: They are higher on classes 1, 2 and 3, the same on class 4, one cent lower on classes 5 and 6, seven cents higher on class A, two cents lower on class B, four cents lower on classes C and D, six cents higher on class E, and five cents higher on class H; 12 cents lower on class F; one third of a cent lower on carload iron and $6\frac{1}{3}$ cents lower on less than carload iron.

The rates from Nashville are much more favorable to Tifton as compared with those to Valdosta than the rates from Cincinnati, Louisville and Evansville to Tifton are as compared with those to Valdosta. Rates from New York to Tifton and Albany have been brought nearer together by changes made since the

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complaint was filed. Some of the rates to Tifton have been made lower than those to Albany, but they are still higher to Tifton upon several classes.

From and after April 16, 1899, the rates on sugar from New Orleans to Tifton were 34 cents carloads and 37 cents less than carloads. Prior to that date they were 32 and 35 cents, respectively. On October 20, 1900, the rates were increased to 37 cents on carloads and 40 cents on less than carloads. During the pendency of the case the sugar rates from Cincinnati, Louisville and Evansville to Tifton have been reduced from 69 to 51 cents on carloads or less and made the same as the rates to Valdosta. The rates from New Orleans to Valdosta are 31 cents on carloads and 35 cents on less than carloads. The testimony is that rates from New Orleans to the various points involved herein are adjusted with reference to the rates from Cincinnati, Louisville and other Ohio River points. It also appears that the sugar rates to Tifton both from New Orleans and Ohio River points are based upon Albany, that is, the rate to Albany is added to the local from Albany to make the rate to Tifton. The transportation conditions and facilities at Tifton are substantially equal to those at Valdosta; the sugar rates from Ohio River points are as low to Valdosta as to Tifton; sugar carried to Valdosta from New Orleans via Montgomery may reach Valdosta without passing through Tifton, but over a somewhat longer route than those through Tifton; and although the short line distance to Valdosta is via River Junction the distance via Montgomery to Tifton is only three miles greater than the short line distance to Valdosta. This short line distance to Tifton is via the Louisville & Nashville to Montgomery, Central of Georgia to Dawson, Seaboard Air Line to Albany and Plant System to Tifton. The Central of Georgia has its own rails to Albany via Smithville, Ga., and if the traffic is hauled that way the distance is increased about 16 miles, making the distance 19 miles greater to Tifton than to Valdosta. Another route via the Seaboard Air Line from Montgomery to Albany reduces the difference in distance to 16 miles. The short line distance from New Orleans to Cordele is only 17 miles greater than the distance to Tifton, and the rates to that point are the same as those to Albany, 23 cents on 9 I. C. C. REP.

carloads and 26 cents on less than carloads, as compared with 37 cents and 40 cents, respectively, to Tifton. The Louisville & Nashville is the initial carrier and the Plant System is the delivering carrier for this traffic to both Tifton and Valdosta, unless the traffic to Valdosta passes through Tifton. Under the general practice followed by the defendant carriers of adjusting sugar rates from New Orleans with reference to those from Ohio River points it would not be just, even if New Orleans sugar to Tifton is carried through Valdosta, to make the rate to Tifton higher than to Valdosta while the rate from Ohio River points through Tifton to Valdosta is as low as the rate to Tifton. The present relation of sugar rates from New Orleans to Tifton and Valdosta unjustly discriminates against Tifton. The similar distances to both places, the initial and delivering carriers over the short lines to both points being the same, the same rates in force to Valdosta and Tifton from Ohio River points, the practice of making rates on sugar from New Orleans to all points in this territory with reference to the rates from the Ohio River, the fact that the rates from New Orleans to Tifton about three years ago were practically as low as those now in effect to Valdosta, and the substantial similarity in circumstances and conditions affecting the transportation of sugar to Tifton and Valdosta, indicate the necessity of making the sugar rates from New Orleans to Tifton the same as those from New Orleans to Valdosta, in order to remove the present wrongful discrimination against Tifton.

The principal points with which Tifton comes in competition are Albany on the west, Cordele on the north, and Valdosta on the south. The rates to these points are not unreasonably low.

The relation of rates to Tifton, Albany, Cordele and Valdosta is largely the product of the basing point system of rate-making in vogue in the southeast. Certain places are called base points by the carriers, to which through rates are made, and local rates therefrom are added to such through rates to make the total rates to places which are not base points.

The facilities for transportation to and from Tifton are as good as those respecting Albany, Cordele or Valdosta. Except in the matter of transportation rates, the facilities for competition of every kind at Tifton and by her people elsewhere are

substantially as good as the same respecting the points just named.

This adjustment of rates restrains and retards the growth and prosperity of Tifton. It has operated to prevent the establishment of jobbing houses and other industries there. It effects undue and unreasonable preferences and advantages in favor of Albany, Cordele and Valdosta and undue and unreasonable prejudice and disadvantage against Tifton and the dealers, manufacturers and consumers there. This result is largely due to the excess in rates from the east and north on traffic to Tifton over those on like traffic from the same points through Tifton to Albany, and in the rates from the west and north to Tifton over those from the same points in this territory through Tifton to Valdosta. This is true to the extent often of excluding Tifton merchants from competition with those of the other places in this territory. As to some traffic the rates on which to Tifton are the combinations of through rates to Albany, or some other so-called basing point, and the local rate from such point, the merchants and dealers of the other places named can compete with those of Tifton on even terms in Tifton itself.

The rates on white lead from St. Louis were at the time of the complaint, and still are, higher to Tifton than the combination of rates to and back from Brunswick. The rates on bran, farm wagons and sash, doors and blinds from Cincinnati, Evansville and Louisville points to Tifton are not higher than the combination of rates to and back from Brunswick.

Macon seems to be outside of a rather natural group territory which includes the other Georgia points considered, and to be materially affected by substantial circumstances and conditions not common to the others.

CONCLUSIONS.

The defendants are subject to the provisions of the Act to regulate commerce. As before stated, the Tifton and Northeastern Railroad, by which line it appears from the tonnage statements in the findings a large proportion of the freight reaching Tifton is delivered, though disclaiming responsibility for the rates in question, "admits each and every allegation of the petition to be true." The justification of the rates by the 9 I. C. C. REP.—12.

other defendants is put mainly upon the theory that lower rates for the longer haul may in the discretion of the carriers be established to meet competition when it exists without regard to the rates for the shorter haul where it does not exist. The idea seems to be that this one fact—actual operating competition at one place and not at another, or greater at one place than another—is the controlling factor in such a case, regardless of the overpowering advantages which the discriminations in rates thus made may set up in favor of one competing community against another. Applying that theory to this case, several witnesses who are the traffic officials of some of the respondent carriers testified in substance that the carriers to the points of destination in question other than Tifton had competed with each other and thereby had brought into effect the rates thereto, which were therefore competitive rates and lower than they otherwise might reasonably be in the absence of such competition; that the carriers had not competed at Tifton in the same way; that the rates to Tifton were lower for like distances than could be obtained by any other known mode of transportation to that place, and that therefore in their opinion the rates in question were reasonable and just.

Neither the absence nor presence of competition by carriers alone, nor the extent of its operation measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all. There may be effectual means foreign to local traffic conditions for curbing competition at one point and not at another. One carrier may deem lower rates just and due to a given point and desire to put them in, and yet be restrained because of the power of retaliation or the threat of rate changes by a rival carrier at some other point detrimental to the former carrier. The necessary result of the theory set up in defense of these rates would be to allow the carriers to create and shape the conditions to justify their rates. They could, among other things, restrain competition at one place by agreement or otherwise and not do so at another, and that, too, independent of equal facilities for competition in carrying at both.

It was said by the Supreme Court of the United States in the case of *Texas & P. R. Co. v. Interstate Commerce Commission*,

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162 U. S. 197, 40 L. ed. 940, 5 I. C. C. Rep. 405, 16 Sup. Ct. Rep. 666:

"In passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the Courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment."

To give effect to this rule a much broader view of the matter must be taken in a case like this than that of the competition of carriers alone.

The situation complained of grows out of the basing-point system prevailing in this southern territory. Albany is a basing point, and Valdosta, while not taking rates as low as those to Albany, has lower rates from the north than those to Tifton, an intermediate point. If it be granted that the carrier may in some instances make lower rates to competitive points than are made to intermediate non-competitive points, we think it clear that the carrier is not at liberty in the selection of these basing points to determine that this town shall have the benefit of the low rate and that town shall not, when the means of competition and the conditions surrounding that competition do not materially differ. *Dawson Board of Trade v. Central of Ga. R. Co. et al.*, 8 I. C. C. Rep. 142.

The complainant contends that the rates to Tifton and the other points involved are made and maintained by agreement between the defendant carriers, and refers to the membership of some of the defendants in the Southeastern Freight Association. As tending to refute that assertion, the agreement under which that association is carried on was put in evidence by the defendants. Whatever may have been the case under former agreements, the one on file shows that but four of the nine defendants are members of the present association: The Central of Geor-
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gia, Georgia Southern & Florida, Savannah, Florida & Western and Brunswick & Western, the last two being parts of the Plant System. It also appears in the findings that some of the points with which Tifton is compared have been given reduced rates through the independent action of some one of the competing lines to those localities. This is practically the only evidence presented having direct bearing upon complainant's claim that the rates are made and maintained by concerted action on the part of the carriers. What may be the actual practice of the defendants, some of whom are and some of whom are not members of the freight association mentioned, does not appear.

Some reference is made in the testimony to the effect upon through interstate rates to Tifton of the action of the Georgia Railroad Commission in fixing maximum rates for local hauls within that State, the general practice of the carriers being to combine the local rate from a basing point in Georgia to the through rate to such basing point in making rates to Tifton. The question as to each of the rates to Tifton involved in this case, all of them being interstate rates and not subject to the jurisdiction of the Georgia Commission, is whether as a whole they are lawful under the Act to regulate commerce, and these rates are compared in the record with interstate rates to Albany, Cordele and other points which are not made by using the maximum rates of the Georgia Commission.

The existing relation of the rates under consideration appears to be the incongruous outcome of previous adjustments and changes made from time to time largely with reference to other places than Tifton rather than the result of any consistent plan or basis having care for the just and equal rights of all.

In the *Dawson Case* the Commission held that Dawson, Ga., was entitled to the same rates as those to Americus, Albany, and Eufaula, which had all been given the lower basing-point rates. The carriers complied with that order. In that case it appeared that from practically all points of origin traffic to some one of these basing points passed through Dawson by one or more of the defendant lines. That is also true of Tifton in this case, except as to freight brought from New Orleans, and except that from Ohio River points and western points of origin the rates

to Valdosta on traffic passing through Tifton are higher than those to other points near Tifton, such as Albany and Cordele.

Although much could be said in regard to the propriety and justice of giving Tifton rates as low as those to Albany and Cordele from all directions, we think the exceptions just mentioned are material and should have controlling influence upon our determination. The circumstances and conditions at Tifton having been found substantially similar to those at Albany on traffic from the East, the rates thereon to the former should not exceed those to the latter, and the same as to Tifton and Valdosta on traffic from the West and North—the rates thereon to Tifton should not exceed those to Valdosta. The rates to Tifton which are less than those to Albany or Valdosta from the directions named were doubtless made so by the carriers for sufficient traffic reasons, including the lesser distance to Tifton than to Albany or Valdosta, and they are not authorized to be increased by this ruling.

The present rates on sugar from New Orleans to Tifton are unjust and unduly prejudicial to Tifton. Such rates to Tifton should not, for the reasons expressed in the findings, exceed the rates on the same commodity from New Orleans to Valdosta.

Any higher direct rates to Tifton than the combination of rates to and back from Brunswick will apparently be removed by these changes in the tariffs. If they should not, the carriers will doubtless see the propriety of correcting their tariffs in that respect without specific requirement by the Commission.

An order based upon these conclusions will be entered and be effective thirty days after service thereof upon the carriers.

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(No. 575.)

THE CONSOLIDATED FORWARDING COMPANY

v.

THE SOUTHERN PACIFIC COMPANY; THE ATCHISON,
TOPEKA & SANTA FE RAILWAY COMPANY; THE SANTA FE
PACIFIC RAILWAY COMPANY; and THE SOUTHERN CALIFOR-
NIA RAILWAY COMPANY.

(No. 576.)

THE SOUTHERN CALIFORNIA FRUIT EXCHANGE

v.

THE SOUTHERN PACIFIC COMPANY; THE ATCHISON,
TOPEKA & SANTA FE RAILWAY COMPANY; THE SANTA FE
PACIFIC RAILWAY COMPANY; and THE SOUTHERN CALIFOR-
NIA RAILWAY COMPANY.

THE CONTINENTAL FRUIT EXPRESS COMPANY
and ARMOUR & COMPANY, Interveners.

Decided April 19, 1902.

1. Joint through routes and rates are ordinarily the subject of agreement between the participating carriers, but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use.
2. Under section 6 of the Act two kinds or classes of routes are recognized and provided for, namely, the line of a single carrier, and a continuous line or route operated by more than one carrier where the participating carriers establish joint tariffs of rates or fares or charges for such continuous line or route; and in respect of both classes of lines or routes the provision is uniform that established rates shall not be increased except after ten days' notice nor reduced except after three days' notice.
3. In the matter of rates for these classes of lines or routes the provisions of the law differ in no respect except one, and that is merely that the

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Commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous lines or routes, while as to the other class such requirement is specified in the law itself. Such exception does not go to the form, substance, maintenance or application of the rates in any degree whatsoever; and the Commission has, by order duly made March 23, 1889, prescribed that carriers by such continuous lines or routes shall publish their joint rates in the same manner as separate or individual roads are required by law to do.

4. Under the practice of defendants as initial carriers in joint continuous routes of reserving to themselves exclusive control of the routing and denying to shippers any choice or control in a selection as between different established routes, a route or tariff may be available to one shipper but not to another, and open one minute to a shipper but closed the next; this to be determined by the carriers' agents according as they may desire to distribute the shipper's business among one another from time to time or for any reason whatsoever. This practice of defendants whereby shippers are denied the use of their transportation facilities by established routes is in violation of the statute, and, in its application by the defendants to the traffic in question, subjects the owners and shippers thereof to undue, unjust and unreasonable prejudice and disadvantage and gives to the carriers undue and unreasonable preference and advantage.
5. Carriers are left by the law to procure equipment for their business by lease as well as otherwise, and they are not prohibited from leasing cars belonging to a shipper, nor are they compelled to contract in this respect with all shippers because they do with one.
6. The questions whether defendants pool their citrus fruit traffic or divide the earnings therefrom, whether the blanket rate of \$1.25 per 100 pounds upon oranges and other citrus fruits from southern California to points on and east of the Missouri River, and the minimum carload weight of 26,000 pounds, are unjust or unreasonable, and whether the statute applies to the charges for refrigeration, and if so, whether such charges are unjust or unreasonable, are retained by the Commission for further hearing and investigation.

Hunsaker & Britt and Graves, O'Melveny & Shanklin for complainants.

Wm. F. Herrin and R. S. Lovett for Southern Pacific Co.

E. D. Kenna, C. N. Sterry, Robert Dunlap and H. J. Stevens for the other defendants.

G. M. Lambertson and Guy C. Earl for the Continental Fruit Express.

A. R. Urion, Frank Hagerman and L. C. Krauthoff for Armour & Company.

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U. S. C. O.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In these cases, which were heard together, the complaints are substantially the same. The complaints allege, in substance, as follows:

1. That defendants are common carriers subject to the Act to regulate commerce.

2. That defendants' charge of \$1.25 per 100 pounds for transporting oranges and lemons from southern California points to all eastern destinations beyond the State of Colorado is excessive and unreasonable.

3. That the charges collected by defendants for icing refrigerator cars used in transporting oranges and lemons are excessive and unreasonable, and that these charges are paid over to the owners of such cars with which defendants have contracts, and are made for a service which the defendants are required by law to perform at a reasonable cost as a part of the necessary transportation service.

4. That one of the car lines with which defendants have contracts is managed or controlled by Edwin T. Earl, who also manages and controls what is known as the Earl Fruit Company, a shipper of oranges and lemons and a competitor of the complainants, and that in the management of such car line over defendants' roads the said Earl obtains knowledge of shipments by complainants and others which results in giving to him and the Earl Fruit Company an unlawful preference and subjects complainants to wrongful disadvantage.

5. That the Southern Pacific Company and the other defendants, composing what is known as the "Santa Fé System," have unlawfully agreed to pool their traffic in oranges, lemons and other citrus fruits which originate in southern California, and divide the net proceeds therefrom.

6. That prior to January 1, 1900, complainants exercised, without objection on the part of the defendants, their right to select the routes over which their shipments should be carried to eastern destinations, but upon that date the defendants unlawfully established, and have since continued to enforce, a rule whereby the initial carrier reserves to itself the routing of all

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shipments of citrus fruits destined beyond its own terminals. That such rule was adopted for the purpose of making effective the contract agreements with the car lines and for enforcing the pooling agreement. That the enforcement of such rule has resulted in irreparable injury to complainants.

7. That defendants have wrongfully increased the minimum carload weights for oranges and lemons from 24,000 to 26,000 pounds, and that this has resulted in overloading to such extent as to injure the freight.

In their answers the defendants call for proof as to the existence and business of the complainants; admit that they are common carriers subject to the Act to regulate commerce, and deny each of the violations of law alleged in the complaints. At the hearing the Continental Fruit Express Company and Armour & Company were allowed to intervene on behalf of the defendants.

The facts deemed material to the proper disposition of the cases are as follows:

FACTS.

1. Both complainants are corporations organized under the laws of California. The Consolidated Forwarding Company, one of the complainants, was organized in November, 1899, for the purpose of forwarding oranges and lemons from California to the various markets of consumption, and its principal place of business is Riverside, Cal. The other complainant, the Southern California Fruit Exchange, was organized in 1896 for the purpose of buying, marketing and selling citrus fruits. The complainants also act as the agent of numerous fruit growers and smaller fruit exchanges located in southern California.

2. The defendants, the Southern California Railway Company, Santa Fé Pacific Railway Company and Atchison, Topeka & Santa Fé Railway Company, are parts of the Atchison, Topeka & Santa Fé Railway System, commonly known as and hereinafter called the "Santa Fé System," which operates a line from Los Angeles and other points in southern California to Chicago in the State of Illinois. The defendant, the Southern Pacific Company, operates a line of railway from Los Angeles, Cal., via El Paso, Tex., to New Orleans, La., and from Los An-

geles via Sacramento, Cal., to Ogden, Utah. At the terminals mentioned and at numerous junction points upon their lines the defendant systems connect with other carriers and form through connecting routes for the transportation of oranges and lemons and other citrus fruits from all shipping points in southern California to practically all consuming markets in the United States. For all shipments of these commodities the defendant railway lines or systems are the receivers or initial carriers of the freight.

3. The defendant carriers have in effect a common tariff on citrus fruits from southern California shipping points to the Missouri River and points east thereof. This joint tariff fixes a single or blanket rate of \$1.25 per 100 pounds to practically all points on and east of the Missouri River, and names 183 participating roads, which are classified in the tariff as Western Roads, New England Roads and roads in Trunk Line and Central Freight Association Territories. Thirty-one carriers in southeastern common-point territory are also named with the following note: "For application of rates to Southeastern Common Points see page 6 of East Bound Tariff, No. 3-6." This tariff prescribes a minimum carload weight of 26,000 pounds, which minimum weight has been in force under all tariffs applying on this class of freight since November 15, 1899. Prior to that date the minimum carload weight was at different times 24,000 pounds and 20,000 pounds.

The tariff prescribes the following general rules of shipment at the rates specified above:

"Oranges, Lemons and Grape Fruit, in packages, or in cars having fixed or transient crates for same, O. R. weather, decay, shortage and delay, prepaid or guaranteed, at estimated weights shown below, in carloads, minimum weight 26,000 pounds."

The estimated weights fixed by the tariff are: Oranges, 72 pounds per box; lemons, 84 pounds per box; grape fruit, 68 pounds per box; when in standard size boxes, namely, for oranges and grape fruit 12x12x26 inches, and for lemons 11x14½x27 inches, outside measurement. When oranges and grape fruit are packed in the car the cubic space allowed for the estimated weights is 11½x11½x24 inches. If boxes of irregular sizes are loaded, actual weight as ascertained at point of ship-

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ment will be charged upon the entire carload. Citrus fruits are described in the tariff as "the fruits of trees, such as the orange, lemon, citron, etc., whose leaves do not fall in the autumn. The principal citrus fruits are oranges, lemons, limes, mandarines, tangarines, citrons and grape fruit."

"In guaranteeing the through rate named herein, the absolute and unqualified right of routing beyond its own terminal is reserved to initial carrier giving the guarantee. In accordance with this rule, agents will not accept shipping orders or other documents, if routing instructions are shown thereon. Neither will agents accept verbal routing instructions."

This rule is followed by one in regard to diversion of the freight from the point or route as originally consigned, which first appeared in the tariff now in effect, and reads as follows:

"Initial carrier will route each car from point of origin to point of destination, and diversions in transit will not be permitted except by consent of initial carrier, who will thereupon designate new routing when diversion necessitates change therein."

The tariff also contains a note that "When initial carrier makes notation on Way Bills giving connecting carriers specific instructions pertaining to the freight, all connecting lines following such instructions are protected by bond in the hands of initial carrier." Shippers are required to execute and file with the carrier a special or general bond of indemnity applying particularly in cases of diversion of the freight.

The tariff now in force became effective January 21, 1902. The rule reserving to the initial carriers the right to route the freight appears also in the tariff in effect on and after January 1, 1900, and which was in force when the complaints were filed. The tariff applying on this citrus fruit traffic is a joint tariff between the defendant initial carriers and the numerous other carriers therein named, and is filed with this Commission pursuant to the requirements of section six of the Act to regulate commerce in relation to joint tariffs over continuous lines or routes. By authority granted in that section of the Act as amended March 2, 1889, the Commission made order on March 23, 1889, requiring the publication of joint tariffs thereafter issued for ten days prior to the taking effect of any advance and for three

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days prior to the taking effect of any reduction in the joint rate, and that order in respect to the publication of joint tariffs is still in force.

Although control of the routing was first reserved to the initial carriers in the tariff effective November 15, 1899, the testimony indicates that the rule was not made effective until January 1, 1900. Prior to January 1, 1900, shippers were permitted by the defendants to exercise the right to control the routing and to divert the freight from the destination point or route named in the billing. This right to control and to divert shipments before they reached the billed destination is claimed by complainants as a legal right, the exercise of which is necessary to the proper and profitable marketing of these products. The shippers individually or through their freight exchanges are kept advised of the state of the market in eastern cities, and they frequently find it of great advantage to have a car which has been billed to Chicago, for instance, stopped at Kansas City, St. Louis or some other point or sent on farther east to Cincinnati or New York, where at the time the demand may be greater and the price higher than in Chicago. This practice of diverting carload shipments from the original destination is common and is usually allowed by carriers throughout the country. The orange shippers protected the carriers from loss which might arise through diversion of the freight by giving an indemnity bond to the initial carrier, and it appears from a notice in the present tariff that this practice is still followed when diversions are permitted by the carrier. Numerous examples appear in the testimony and are used by complainants in their brief showing that to divert a car to some points or to specified territories the freight must be sent over particular routes, and that it is necessary to the proper carrying on of his business that the shipper should know and control the routing.

Some time in the fall of 1899 the defendant, the Southern California Railway Company, issued a circular stating that on and after January 1, 1900, it would reserve to itself the right of routing these citrus fruits, and on January 20, 1900, it issued a private circular to agents containing instructions how the shipments should be routed. The body of this circular to agents reads as follows:

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Referring to Circular Letter No. 45 regarding forwarding of citrus fruit, effective January 1, 1900, you will route shipments of citrus fruit originating at your station in accordance with the instructions herein given.

1. Destinations and routes that you will use, and percentage of business that it is desired to send via different railroads is shown below. You will, in forwarding shipments, divide between connecting lines in accordance with the proportions shown in this sheet.

2. Shipments to any point reached by Santa Fé System lines must follow its track to destination.

3. Shipments to points not shown in this list that are local on any connecting line, give the Santa Fé System longest possible haul and make reasonable direct route.

4. Shipments to points beyond Santa Fé System lines reached by more than one railroad, and that is not shown in the list of destinations given herein, you will forward via the most direct route, having in view the long haul for the Santa Fé System.

5. Shipments via Colton or Los Angeles to an eastern destination via Southern Pacific line, you will bill care of Southern Pacific Company with no other routing, except specially instructed by this office; you may show on waybill when necessary point shipper desires car to pass through to reach certain markets in accordance with instructions in paragraph six. Agent of the Southern Pacific Company at Colton or Los Angeles, as case may be, will forward you immediately after billing, an abstract on the waybill showing routing through to destination. This is done that you may be able to show on the bill of lading, if so desired by shipper, routing through, or give this information in any other form to shipper.

6. Shippers will be allowed to make following notation on shipping order covering shipments of Citrus Fruit and carrier will, so far as consistent, comply—

“Would prefer this car to pass through.....”

.....”
points that shipper may likely market the car to be shown

in blank spaces but must in every instance be point reached by more than one railroad.

7. When a shipper asks for some particular delivery and you are satisfied that it is necessary to the business that it be given, and if the route is one authorized in this circular and will not shorten the Santa Fé System haul, you may route as the shipper desires so far as the delivering line is concerned. If any intermediate lines, you will use such of them as will best serve to divide the business in accordance with the proportion shown herein.

8. This circular is for the private information of the Agent to whom it is sent, must be kept under lock and key and not to be shown to any outsiders or employee except such employees as have to use it in their station work, and representatives of the Freight Department and General Officials of the Southern California Railway. Agents will be held strictly accountable for the proper care of this circular.

Agents will distribute
shipments in accordance
with percentages shown in
this column.

That part of the circular showing these percentages was not furnished at the hearing.

While under the terms of this circular certain diversions are permitted, the shippers contend that this provision is insufficient, because without knowing and controlling the routing the shipper is unable to locate the cars or to determine what car can be diverted most advantageously. Whether this circular has been canceled or superseded by another does not appear. If the shipper cannot either control or know the routing he is unquestionably prevented from diverting the freight as occasion may require, and if he cannot control the routing, but must accept such route as the carrier may choose, his business may be, and in the nature of things must often be, unjustly affected. One example would be that a particular delivery upon some line to the consignee may thereby be denied. It is not understood, however, that all diversions are denied. The tariff shows that diverting the traffic from one destination to another is permitted

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when the shipper can obtain the consent of the initial carrier, and the testimony is that while the initial carriers do not always route as requested by the shippers they generally do comply with such requests.

The defendants claim that the rule reserving to the initial carrier the right to route the traffic was necessary to enable them to secure a discontinuance of a practice of paying rebates which prevailed previous to the establishment of the rule, and which is referred to in another part of these findings. Just how the rule actually operates to prevent rebate payments by connecting lines or others is not disclosed. The situation warrants the inference, however, that these two initial carriers or systems, connecting with other carriers at various points, and they in turn connecting with numerous other carriers as shown by the tariff, are able by acting in concert, and routing as they see fit, to only send traffic over the roads of such carriers as fulfilled an agreement to refrain from making any rate concession to the shippers, and some influence of like character could doubtless be exerted by them upon the car lines which are also hereinafter referred to. This citrus fruit traffic is the only kind of freight concerning which the defendant carriers insist upon designating or controlling the routing to eastern markets. That is the testimony, but defendants' general eastbound freight tariff bears upon its title page a notation that the routing is absolutely and unqualifiedly reserved to the initial carrier.

4. Some testimony was given in regard to the increase of the minimum carload weight from 24,000 to 26,000 pounds, and the claim of complainants that such increase was unjust. All but a small proportion of the ventilator-refrigerator cars used in carrying this traffic are 40-foot cars, and no difficulty is found in loading that quantity in these cars. Oranges are packed usually in standard boxes of the size specified above as prescribed in defendants' tariff. The number of oranges packed in a box ranges from 80 to 300, and sometimes more. The boxes stand on end in the cars and are loaded three tiers high, 362 boxes to the 40-foot car. The interior space of the 40-foot ventilator-refrigerator car now in general use is 32x8x8 feet, or 2,048 cubic feet. A box of oranges occupies about 2 cubic feet, and the full load of 362 boxes about 724 cubic feet. While for shipping

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purposes a box of oranges is estimated to weigh 72 pounds, the actual weight is about 78 pounds. The actual weight carried upon the 26,000 minimum basis and estimated weights is about 28,236 pounds. With the 40-foot car in use, any damage to the fruit from overloading, or rather from putting too much of the fruit in a given space, is apparently obviated. Some of the testimony is to the effect that the smaller car can be used to greater advantage by the shipper in particular markets, but no great stress was laid upon this in the argument, and if it is important we should require more evidence upon the point than appears in the present record.

5. In October, 1897, the Southern Pacific Company entered into contracts with certain private car owners to supply the Southern Pacific with ventilator-refrigerator cars. The contracts went into effect November 1, 1897, and were to remain effective during five years from that date. These private car companies are the Continental Fruit Express, the Fruit Growers' Express and the Santa Fé Fruit & Refrigerator Line. About 90 per cent of the stock of the first-named company is owned by Mr. E. T. Earl, its President. Armour & Company, of Chicago, own the Fruit Growers' Express. The ownership of the Santa Fé Fruit & Refrigerator Line is not clearly shown, though there is some testimony to the effect that the cars of the third company were furnished by the Santa Fé Pacific Railway Company.

These contracts call for a maximum equipment of 1,500 cars from each of the car-line companies. The Continental Fruit Express, having already furnished 1,000, agreed to furnish 500 more; the Fruit Growers' Express, having already furnished 700, agreed to furnish 800 more; and the Santa Fé Fruit & Refrigerator Company, having already furnished 1,200, agreed to furnish 300 more. Under these contracts it was agreed that such cars should be open upon equal terms to all applying shippers; that the Southern Pacific should operate them, but the car-line companies should ice and keep them in repair and make reasonable refrigerator charges; that the Southern Pacific should pay for the use of such cars loaded with citrus fruit, deciduous fruit, or vegetables, from southern California points, three-fourths of one cent per car per mile for the movement over

said railroad, but no mileage would be paid west bound, except when loaded with freight requiring refrigeration or ventilator-refrigerator cars for protection against heat or frost, in which event the Southern Pacific should pay six-tenths of one cent per car per mile. The Southern Pacific also guaranteed that such cars should be in service to the reasonable limit of their utility. While there is ground for inference that the same rate of mileage is paid to the car-line companies by connecting carriers, there is no specific testimony upon that point.

Substantially the same contracts were entered into with the Southern California Railway Company and the Santa Fé Pacific Railway Company, parts of the Santa Fé System; but no contract between those companies and the Santa Fé Fruit & Refrigerator Line appears in the record. These contracts are much more favorable to the carriers than those previously in force. The mileage rate paid by the carriers was formerly three-fourths of a cent in both directions.

The ventilator-refrigerator cars are improved 40-foot cars with patent ventilating and refrigerating appliances to prevent injury to the traffic from frost and heat. The refrigeration is done by means of a tank at each end of the car. The tanks will hold 10,000 pounds of ice. The only charge made to shippers for the use of these cars is that which is imposed when refrigeration is required.

6. The following table shows the charges for refrigeration upon oranges and lemons and other citrus fruits and vegetables from southern California points to eastern destinations which were made by the Continental Fruit Express from 1892 to 1900, inclusive, during the season from March to December of each year.

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項目	単位	数量	金額	備考
材料費	円	100	100	
労務費	円	200	200	
経費	円	50	50	
合計	円	350	350	

[illegible]

had not been refrigerated at all. These icing or refrigerating charges cover the use of special equipment, cost of the ice, labor, and supervision of cars in transit. The railway employees attend to the ventilation. The winter charges are less because less ice is required and the cost of ice is lower in that season. The charges of the other car lines were and are the same as those of the Continental Fruit Express. When icing is desired by shipper, "icing requested" is noted upon the billing of the freight by the carriers' agent. These charges are not published in the railroad tariffs or filed in any form with this Commission. The refrigeration charges are collected by the railroad companies and turned over to the car-line companies. Prior to 1897 it appears that the Santa Fé System collected the refrigerator charges, but that on shipments via the Southern Pacific the collection was made by the car lines themselves.

Only about 20 per cent of the total number of cars shipped in a season are refrigerated. The icing of cars begins in March or early April and continues throughout the remainder of the shipping season. Oranges and other citrus fruit moved under refrigeration from southern California to eastern markets are routed via three gateways, Ogden, Utah, Albuquerque, N. M., and El Paso, Tex. The car-line companies have the icing done at a number of points along the different routes. The Continental Fruit Express Company ices its cars at the following points; Ogden Route—Los Angeles, Sacramento, Truckee, Ogden and North Platte. Albuquerque Route—San Bernardino or Los Angeles, the Needles, Albuquerque, Las Vegas and Argentine. El Paso Route—Los Angeles or Colton, Tucson, El Paso, Fort Worth and Kansas City. Along any of the routes, if the cars are destined beyond Chicago, they are iced at Chicago; if destined as far east as the Atlantic Seaboard they are iced at one or two points beyond Chicago. Artificial ice is used at some points and natural ice at others. At Ogden, North Platte and Omaha on the Union Pacific the ice is furnished and placed in the car tanks by the railroad, but at the expense of the car lines. It does not appear that the Continental Fruit Express Company has any ice houses in use anywhere outside of California; that company contracts with either the railroads or the ice companies to do the icing. This express company does,

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however, have employees at these icing stations whose business it is to look after the icing of the cars immediately upon their arrival, and make daily reports to the head office, including time of arrival and time of departure, and the amount of ice placed in the different cars. Such employees are paid according to the importance of the icing station and the volume of business they have to handle. Some are paid \$60 per month and others as high as \$125 per month. These men are kept in the employ of the car lines all the year. On account of the delay in the arrival of trains, ice is often kept on the icing platforms exposed to the weather for a considerable period before the trains arrive.

7. For seven or eight years prior to 1900 the shippers of citrus fruits from southern California to competitive points in the east received rebates ranging from \$15 to \$25 per car, which were paid in a great many cases by the car-line companies. The published refrigerator charges were exacted and subsequently the "allowance" was paid back to the shippers. The eastern connections of the defendants also paid these rebates or a part of them through their representatives direct to the shippers. These eastern connections are also shown in some cases to have paid the car-line companies more than the actual car mileage charges, in order, as Mr. Earl, of the Continental Company, testified, to help out the car line in paying the rebates.

The payment of these rebates was well known, and they were made generally to all shippers. Rebates were paid when the car was not refrigerated, as well as when it was, though they were greater when refrigeration was used. The average rebate was \$15 when not refrigerated and \$25 when refrigerated. It appears that the eastern connections of the defendants were willing to pay these rebates, or their shares of them, in order to have the traffic routed over their lines. Mr. Naftzger, President of the Southern California Fruit Exchange, filed a statement showing rebates received by that complainant during the four years 1895, 1896, 1898, and 1899. The rebates for 1895 and 1896 were from the Overland Despatch. The reason why 1897 is omitted is because he claims to have had no data for that year. These rebates aggregate for those four years \$37,165 from shipments under refrigeration and \$137,326 from shipments not refrigerated, making a total of \$174,491.

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As the practice of paying these rebates was general, the shippers came to regard them as part of their legitimate returns from the orange business. The payment of these rebates was discontinued January 1, 1900, and there is no evidence that the practice has been resumed.

8. A part of the testimony is devoted to the question whether the carriers by making and carrying out the contract for cars with the Continental Fruit Express, of which Mr. E. T. Earl is shown by the evidence to be the President, do not afford an undue preference to the Earl Fruit Company, of which that gentleman is also president. The Continental Express being a car company, keeps informed of the position of its cars from day to day and has more or less knowledge of the shipments carried in them, and as Mr. Earl is President of that company and the Earl Fruit Company, a competing shipper with complainants and others, it is claimed that he is able to use the knowledge he acquires in the management of the express company to benefit his fruit company. Mr. Earl appears to be the only shipper of fruit from southern California who is also in the position of operating or managing one of the car lines. Undoubtedly this tends to give him as a shipper an unfair advantage over other shippers. For this reason shippers have at various times objected to the use of the Continental cars, although the cars themselves are admitted to be in every way satisfactory. The evidence indicates, however, that the Southern Pacific at first refused to run the Earl cars and only consented to do so after these cars had come into quite general use through the demands of shippers.

Mr. Stubbs, the Traffic Manager of the Southern Pacific, in regard to these cars said: "I desire to repeat what I have said before, that if three years ago, when I made the contract for this line, that it had been known that there was this objection to this car line that we certainly should not have taken Mr. Earl's cars." And again it is said by Mr. Stubbs: "I will state that when we get rid of this contract that is now in effect, that we will not make it again, and if we had known of the condition of affairs, it would not have been made."

Further on, in the same connection, Mr. Stubbs also said: "I say now that when this contract has expired that we will not

make a contract with any other shipper." Under the terms of the contract it will expire during the present year, and with its expiration the complaint will be satisfied in that respect, if it has not already been obviated by changes in the car-line management.

9. Oranges, lemons, and other citrus fruits in Southern California are grown in localities reached by the Southern Pacific and Santa Fé Systems in such volume as to produce naturally about equal proportions along each line. The complainants allege that these carriers pool the business and divide the net proceeds or revenue. This is denied by the defendants both in the answers and testimony submitted on their behalf.

It does appear, however, that these two systems endeavor to preserve the equal division of this traffic, and with both carriers acting together to secure that result one efficient means to such end would be the operation of their tariff rule reserving to themselves the routing of the freight to eastern destinations as they see fit.

The circumstances attending the execution of the car-line contracts, such as being executed at the same time, the exclusion of all other car lines, the fact that the railroads have each year divided their demands for these cars between the three car lines in certain proportions, and that Armour & Company consented to the Continental Fruit Express increasing the number of its cars in the orange business in consideration of the Continental Company withdrawing from competition in the southern strawberry trade, are pointed out by complainants to indicate an unlawful agreement or understanding between the defendant railroad companies. It was admitted by Mr. Stubbs, the Traffic Manager of the Southern Pacific, at the hearing in Washington that the way the cars were apportioned between the car lines by the railroad company may be called a division, but he claimed that it was not an unlawful division. A letter of Mr. Stubbs put in as an exhibit to the testimony shows that Mr. Earl, President of the Continental Express, called upon the Traffic Manager of the Southern Pacific in December, 1898, and asked to be permitted to furnish more cars than the contract called for, but he was told that the additional cars were not then wanted. In July, however, the Freight Traffic Manager of the Southern Pacific told

a representative of the Continental Express that the prospects were such that the Southern Pacific would probably require more cars, but that it would get them from the Fruit Growers' Express. At a later date Mr. Robbins of the Fruit Growers' Express wrote the Freight Traffic Manager saying: "I desire to suggest that it might be well for your Company to take 250 more cars from the C. F. X. and the Santa Fé the same, provided always that the number of their cars used does not exceed the number of ours either in your own or the Santa Fé's service." This offer is stated to have been made "in the interest of harmony" at a "joint conference" of the representatives of the Southern Pacific, the Continental Fruit Express and the Fruit Growers' Express. It was arranged that the Southern Pacific would take and the Continental Fruit Express would supply an additional 350 cars, and that the Southern Pacific would take and the Fruit Growers' Express would supply an additional 150 cars.

The routing circular of January 20, 1900, extracts from which appear herein in connection with the finding as to the rule of the carriers reserving to themselves the routing, shows that the orange shipments are forwarded by the initial carrier so as to give certain percentages of the traffic to connecting lines.

Some instances appear in the testimony in which cars offered for shipment by the Santa Fé were transferred over to the Southern Pacific. One car loaded at a station on the Santa Fé was a refrigerator car belonging to the Southern Pacific equipment. It was sent over the Southern Pacific against the shipper's protest, because it was claimed the car had been furnished by the Southern Pacific. Another shipper who packed his oranges at Covina, a station on the Southern Pacific not reached by the Santa Fé, having had some trouble with the Southern Pacific, hauled his freight by wagon seven or eight miles to the station on the Santa Fé. He requested the agent of the Santa Fé to ship it via the Santa Fé Route east, but this the agent declined to do, and shipped it by way of the Southern Pacific, for the reason, it was claimed, that if the Santa Fé took the shipment it would be invading the territory of the Southern Pacific.

10. Shipments of oranges and other citrus fruits by rail from southern California to eastern destinations were not made to
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any extent until about the year 1886. In that year only a few hundred cars were shipped. The total citrus fruit acreage is now about 50,000 acres. In 1890 about 5,000 carloads were shipped to the east, and in 1898 the shipments exceeded 15,000 cars. This fell to 10,350 cars in 1899, but in 1900 about 13,000 cars were sent east up to May 1, and the total crop for that year was estimated at 17,000 cars. In 1899 there were in the State of California, as shown by the tax books, 2,072,417 bearing orange trees and 1,222,319 orange trees in the first year's growth. The tree begins to bear about the fifth or sixth year, but does not come into full bearing until the eighth year and sometimes later. It is long-lived, and as it grows older the quality of the fruit is well maintained. From 70 to 90 trees are planted to the acre. The average price of nursery stock is about 40 cents per tree. Land adapted to orange culture sells without water right from \$2.50 to \$5 per acre. The water right costs about \$200 per acre, and 15 cents per inch of water used. Full-bearing and well-kept groves sell for from \$1,000 to \$1,800 per acre. The oranges are usually kept in the packing house for "curing" two or three days before shipment. As before stated, the orange shipping season begins in November and ends in the following July or August, but the greater portion of the crop is marketed by about the first of April. The lemon crop in southern California constitutes a comparatively small part of the citrus fruit crop. It is estimated to be about 1/10 or 1/15 of the orange crop. About one-half of the shipments go to Chicago and intermediate points and the other half to Atlantic Seaboard cities and destinations easterly of Chicago. It costs annually about \$20 per acre to carry orange trees to the producing period. This includes irrigation, land cultivation, pruning and general attention. The labor upon a bearing grove costs about \$30, fertilizers \$20, and incidental expenses, including water and boxes, about \$20, making a total of \$70 per acre per annum. Three hundred boxes per acre is considered a fair yield. The cost for cultivation, picking, grading, packing, hauling, loading in cars, and selling, including commissions, is about 75 cents per box.

The average gross price received for oranges, all grades, free on board cars at point of shipment, during the season of 1899

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was about \$1.65 per box, and the average for that portion of the season from November 1, 1899, to March 31, 1900, is given in testimony at \$1.47 per box. This would leave net to the grower, after deducting the 75 cents per box for expenses, 90 cents per box in 1899 and 72 cents per box in 1900. The price in the markets varies greatly according to the demand on different days and the grade and quality of the fruit. Carloads of oranges are frequently sold at auction in New York, Boston and other large markets. A car of oranges is stated to sell in the eastern markets for as high as \$1,000 and sometimes as low as \$300.

11. The blanket rate of \$1.25 per 100 pounds amount to 90 cents per box of oranges on an estimated weight of 72 pounds. The actual weight of a box of oranges is about 78 pounds. A carload of oranges containing 26,000 pounds, the minimum carload weight, gives the carriers a total revenue of \$325 per car. Add to this the icing charge which is \$60 to Kansas City, \$75 to Chicago and \$90 to New York, and the total charge paid by the shippers amounts to \$385 to Kansas City, \$400 to Chicago and \$415 to New York. The following table shows the rates per ton per mile resulting from these charges from Redlands, Cal., to Kansas City, Chicago and New York via the short lines, the Santa Fé and its connections:

From Redlands, Cal.,	Distance. Miles.	Rates per ton per mile from transportation charges only.	Rates per ton per mile, in- cluding icing and transporta- tion charges.
To		Cents.	Cents.
Kansas City.....	1,758	1.422	1.684
Chicago.....	2,216	1.128	1.388
New York.....	3,129	.799	1.02

The average rate per ton per mile upon all freight for all roads in the United States during the year ending June 30, 1900, was .729 of a cent. While that figure embraces all of the different hauls, all kinds and classes of freight, and all rates upon all roads, the rates per ton per mile above given for this orange and other citrus fruit traffic are all upon very long hauls, that to New York being among the longest possible hauls in the United States, and the others covering very long distances. If

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the ton-mile rates on general freight were not low for such extreme distances the resulting aggregate charge would be so high that the movement would be prohibited.

Another circumstance which bears upon the question of reasonableness is that citrus fruits are carried at the \$1.25 rate only at owners' risk of damage from "weather, decay, shortage and delay," and the transportation charge must be prepaid or guaranteed by the shipper. All of those items which might on this traffic add materially to the carriers' risk are excepted by the carriers as a condition of carriage at the \$1.25 rate.

The rate of \$1.25 per 100 pounds has been in effect for practically the whole time since this citrus fruit business became the subject of any considerable movement by rail to eastern cities. It is as high to-day, when the shipments aggregate 15,000 or more cars annually, as it was when but a few hundred cars were moved during a shipping season, and when the rate as applied to that movement was low. The citrus fruit business in southern California has developed from a struggling enterprise, furnishing comparatively little traffic to the carrier, into a great and thriving industry from which the carriers derive a large and growing traffic, steady both in daily offering and in annual volume, and which they can prepare to move during a shipping season ranging from November to August, with the bulk of the crop moving in the four months December to March, inclusive.

The cars formerly in use were smaller and the minimum weight permitted was as low as 20,000 pounds. To-day the minimum is 26,000 pounds, three tons greater, giving an increase revenue of \$75 per car. The amount paid by the carriers for the use of these cars has been practically reduced one-half. Formerly they paid $\frac{3}{4}$ of a cent a mile run in both directions; now the contracts limit this payment to the eastbound haul, with no compensation to the car lines on the return trip unless articles requiring ventilation or refrigeration are loaded in them.

The testimony shows that rebates amounting generally to from \$15 to \$25 per car were paid during a period of at least seven or eight years prior to 1900. Some of this money was paid by the car lines and some of it by eastern connections

of the initial carriers, but however paid, these allowances or rebates must be regarded as deductions from the amount paid for transportation.

The service rendered by the carriers in transporting this traffic to eastern points is more expeditious than that provided for ordinary traffic, and is therefore more expensive, and improvements, not only in the equipment, but in time and general care of the traffic in transit, have been made. Formerly the time consumed in carrying to New York was as much as 25 days. This has been reduced to 15 and occasionally to 10 days. It is testified, however, and we so find, that the time used in transportation to eastern markets was greater in 1900 than it was in previous seasons. Undoubtedly this service is in a degree special, and the carriers can reasonably demand additional compensation for the extra cost which is thereby involved. On the other hand, the carriage of perishable freight from California to the east, not only of citrus fruits, but of deciduous fruits, such as apples, apricots, berries, cherries, currants, figs, plums, pomegranates, prunes, quinces, guavas, nectarines, olives, pears, peaches, grapes, and of green vegetables, has grown to such extent as to constitute a large share of the total traffic of the California lines, and the great increase in the volume of that business has enabled the carriers to reap much greater returns over operating expenses than was possible when the business was comparatively small. The rates charged by defendants on deciduous fruits and green vegetables, both of which kinds of freight are more perishable than oranges, lemons and other fruits of the citrus variety, are as follows:

Deciduous fruits, estimated weights per box or crate, 24,000 pounds minimum carload weight during season prior to July 1, and 26,000 pounds after July 1, owners' risk—\$1.25 per 100 pounds to Colorado, Texas, Missouri River and Mississippi River points, Chicago, St. Paul and Minneapolis; \$1.50 to New York, Philadelphia and Buffalo; \$1.56 to Boston.

Green vegetables, 20,000 pounds minimum carload weight, owners' risk,—90 cents per 100 pounds to Missouri River points and points east thereof up to and including Chicago and common points. Rates east of Chicago are not shown in tariffs.

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Green vegetables are also carried by passenger train service at a rate of \$2 per 100 pounds.

The tariff specifies that the rates named do not include the refrigerating charge, which is in addition to the tariff rate.

The fact that refrigeration is demanded by shippers for citrus fruits to a considerable extent, that is to say, for about 20 per cent of the shipments, and that it is provided by the carriers, indicates that such refrigeration is a recognized necessity. This icing service is furnished through the car lines in the same manner and to the same effect as these cars of special design are furnished through the car lines for the use of shippers of this traffic. The shippers have nothing to do with the car line in the shipment of their freights. Just as the car is furnished to the shipper upon request made to the carriers so is the icing done upon request made by the shipper to the carriers, and the charge for refrigeration is collected by the carrier along with the charge for hauling the freight.

These facts all tend strongly to support the claim of complainants that the rate of \$1.25 is unreasonable and unjust, but the evidence taken as a whole is not deemed sufficiently full to warrant a positive finding to that effect, or if so to what extent. While there is considerable testimony upon the legality of the icing charge the showing as to that question is also deficient in some material respects.

CONCLUSIONS.

The defendant carriers are engaged in interstate commerce in respect to the traffic involved and are subject to the Act to regulate commerce.

One important question presented in this case is whether the initial carriers can lawfully reserve to themselves the routing of shipments and deny the shipper his choice of established routes. Carriers are required to follow the instructions and directions given by shippers whenever practicable. *United States Express Co. v. Kountze Bros.* 8 Wall. 353, 19 L. ed. 460; Elliott on Railroads, sec. 1490; *Rea v. Mobile & Ohio R. Co.* 7 I. C. C. Rep. 43. It is contended, however, by the defendants that joint through routes and rates are made by agreement between connecting carriers and those routes and rates are to be re-

garded as open to the public only upon such conditions as may be specified under the agreement; and it is pointed out that upon the traffic under consideration the through rate is guaranteed only upon condition that the routing shall be absolutely and unqualifiedly in the control of the initial carrier. Joint through routes and rates are ordinarily the subject of agreement between the participating carriers, but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use. Every continuous rail line or route authorized by the sixth section of the Act is of necessity constituted by two or more separate roads uniting by voluntary agreement and fixing joint through rates over the line thus formed. Such a route is in every instance as definite and specific a physical line as is either of the separate roads which constitute it. The formation of through routes is not compulsory, but when established and so long as they exist, the obligations, restraints and regulations of the law attach to them in all respects as fully as to a line composed of a single road. By the provisions of the sixth section of the Act, two kinds or classes of routes are recognized and provided for. The first is that of a single individual or separate road, which is required to print, keep open to inspection at stations along its line, and file with the Commission such rates of fares and charges for transportation as it may establish. The other is a continuous line or route operated by more than one carrier where the several carriers operating such a line or route establish joint tariffs of rates or fares or charges for such continuous line or route. In respect of both classes of these lines or routes the provision is uniform, that established rates shall not be increased except after ten days' notice, or reduced except after three days' notice, as in said section specified. There is no respect in which the provisions of the law differ in the matter of the rates for these classes of routes respectively except one, and that is merely that the Commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous or through routes, while as to the other class the law itself fixes this. This exception does not go to the form, substance, maintenance or application of the rates in any degree or respect whatsoever. The Commission in

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the performance of its duty under the authority referred to, did on the 23d day of March, 1889, by order duly made, prescribe that carriers by such through or continuous routes should publish their joint rates in the same manner as separate or individual roads are required by law to do. If as matter of right the initial carriers parties to the joint continuous routes, which with other carriers they have formed, may control the routing and deny the shipper any choice or control in a selection as between the different routes thus formed, then a route or tariff may be available to one shipper, but not to another, and open one minute to a shipper, but closed the next; this to be determined by the carriers' agents according as they may desire to distribute the shipper's business among one another from time to time or for any reason whatever. Such we do not believe to be the meaning of the law. We find nothing in the statute authorizing routes or tariffs of any kind available to shippers only at the option and in the discretion of the carriers and upon such varying conditions and considerations as they may from day to day or from hour to hour see proper to be governed by, regardless of the wishes and interests of the shipper.

The Commission has permitted a practice whereby an initial carrier may publish and file schedules of joint through rates over such through routes as it may designate therein, naming as parties to the same such and as many consenting connecting carriers as it may choose whose roads could form part or parts of any one or more of such through routes. Each of the many and varying practical through routes under such a schedule is, however, as separate and distinct as if it were the only one. Each is, in its entirety, without discrimination in every instance equally available under the law to every shipper as to the initial carrier. If it were otherwise, this method of forming and notifying by one tariff schedule many continuous through routes, which has been sanctioned largely at the instance of the carriers and for their convenience and economy, could be perverted to the overthrow of one of the highest aims of the law—equality among all shippers. A wide field would be laid open for rank discrimination and gross injustice. The law requires the establishment and publication of rates on all routes. Therefore there can be no through route without through rates thereon. Such rates may be the combination or sum of the local or

separate rates of the several roads forming the through line, or they may be, and usually are, as in this case, less. So long as the through route exists the rates established thereon are guaranteed by command of the law itself to every shipper without discrimination, and no greater guarantee can be given by the initial carrier, as is insisted by the defendants in these cases as a basis for the claim of the exclusive control of routing by the initial carrier.

The very essence of the continuous joint line authorized by law is its availability to shippers for through transportation. The law provides for no such thing as a conditional route; neither can there be conditional routes constructed upon a condition such as is attempted to be enforced in these cases without promoting the very thing which the law was intended to prevent—undue and unreasonable discrimination.

In view of the terms and objects of the law, the use and function of transportation lines, and established rates thereon, it is a contradiction to say that schedules filed as in these cases create on the one hand many through continuous lines, each and all open at all times to the initial carrier, but none of which is at any time open or available to the shipper except in the varying discretion of such carrier. To what end is it sought to give the initial carriers of this traffic exclusive, continuing control thereof to destination in defiance of the wishes and instructions of the owner and shipper of the property? The chief reason assigned by the defendants appears to be that it diminishes opportunity for successful arrangements between the shippers on the one hand and carriers and refrigerator car companies on the other for rebates. It does appear that after the control of all routing was taken over by the defendants and away from the shippers, the practice of paying rebates practically ceased. This, however, is not all. It further appears that a tonnage pool of this traffic as between the connecting carriers not defendants was established and that the defendants so control the routing as to give specific percentages of this traffic to their several connections, thereby fulfilling and giving effect to this unlawful and forbidden arrangement.

Reason is found in the facts shown for the belief that the suppression of the practice of allowing rebates was only an incidental result of and was not the primary or principal object

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of the defendant carriers in taking over to themselves control of the routing beyond their respective roads, but that the object was to give effect to the tonnage division before stated between their connections. The testimony shows that the rebates had not been paid or borne by these defendants, but largely by the owners of the refrigerator cars in which the fruit was shipped, and in part by eastern connections. It is strongly significant also that in respect alone of this freight (the only traffic shown to be covered by the tonnage division arrangement and none other in the whole range of varied commodities and classes of traffic) do the defendants assume to dictate its movement beyond their own roads, as between the established continuous lines. It seems an indefensible proposition that a vital right of the shipper shall be sacrificed, and violation of one important provision of the statute shall be fostered in order to induce obedience to another. The use of the shipper's property in this manner and to this end is as if it were seized upon, marshaled and maneuvered by the initial carriers for distribution among connections for their own advantage and to satisfy such connections, and thereby hold up rates by unlawful methods regardless of the rights of the owners of the property handled and used for these purposes. The carrier is a bailee of the property which is in its custody for the purpose of transportation only, and it cannot lawfully wrest from the owner that general control and direction of the same which is deemed by him needful for the prudent protection of his own property and interests and not inconsistent with the due performance of the service undertaken by the carrier.

Moreover, in respect of this traffic shippers are required to release the carriers from liability for damage by the weather, decay, shortage and delay. They are also required to prepay or guarantee freight charges to destination. So that the carriers are relieved of the care and risk on this property as to their customary lien on freight for the collection of their charges which, on shipments of this traffic, must be paid whether the goods bring a sufficient amount for that purpose or not. Neither does the initial carrier assume liability for damage resulting from the negligence of any connecting line. Hence, for such damage the shipper must seek recovery from such connecting carriers in distant States. One of the reasons frequently ad-

vanced against the compulsory formation of through routes by carriers is that they might thereby be forced to make traffic arrangements and interchange freight with insolvent connections; yet in the present cases the shipper may under the rule in question be compelled to seek recovery of damages from an insolvent connecting carrier over whose road his traffic has been routed contrary to his express direction or one that does not promptly or fairly adjust damage claims. His property may be shipped over a line composed of several short roads, whereas he may desire, and it might be to his substantial benefit, that the same should move over a through line composed of one or two roads the management and service of which are efficient and satisfactory.

The findings also indicate that the time of transit has increased since January 1, 1900, the time when the defendant carriers first undertook to dictate the routes over which the freight should pass. In at least two instances the evidence shows that the initial carrier receiving the freight for transportation has against specific directions of the shipper turned the same over to its competing initial carrier. We know of no decision under the common law or any statute in which sanction is found for such an arbitrary disregard of the obligations resting upon a common carrier. While the testimony indicates that requests for routing by shippers have generally been observed, the location of these initial lines and their connections makes it plain that the initial carrier can, when a shipment is requested to be routed one way, send it by another, and as this traffic is perishable, the disadvantages and discriminations which may result are obvious. Take the Southern Pacific, which has a southern line through El Paso and as far east as New Orleans, and a northern line through Sacramento and thence east to Ogden. A shipment destined to Chicago may pass over either route, but in winter, other conditions being equal, the El Paso route would be preferred, while during the spring and perhaps early fall the Ogden route would be the more desirable. So in case of desired delivery in an eastern city by a particular road, the initial carrier may nevertheless route the freight for delivery by another terminal road. While it does not distinctly appear in testimony that such delivery has been denied in any particular case, the manifest evil results of arbitrary I. C. C. REP.—14.

Green vegetables are also carried by passenger train service at a rate of \$2 per 100 pounds.

The tariff specifies that the rates named do not include the refrigerating charge, which is in addition to the tariff rate.

The fact that refrigeration is demanded by shippers for citrus fruits to a considerable extent, that is to say, for about 20 per cent of the shipments, and that it is provided by the carriers, indicates that such refrigeration is a recognized necessity. This icing service is furnished through the car lines in the same manner and to the same effect as these cars of special design are furnished through the car lines for the use of shippers of this traffic. The shippers have nothing to do with the car line in the shipment of their freights. Just as the car is furnished to the shipper upon request made to the carriers so is the icing done upon request made by the shipper to the carriers, and the charge for refrigeration is collected by the carrier along with the charge for hauling the freight.

These facts all tend strongly to support the claim of complainants that the rate of \$1.25 is unreasonable and unjust, but the evidence taken as a whole is not deemed sufficiently full to warrant a positive finding to that effect, or if so to what extent. While there is considerable testimony upon the legality of the icing charge the showing as to that question is also deficient in some material respects.

CONCLUSIONS.

The defendant carriers are engaged in interstate commerce in respect to the traffic involved and are subject to the Act to regulate commerce.

One important question presented in this case is whether the initial carriers can lawfully reserve to themselves the routing of shipments and deny the shipper his choice of established routes. Carriers are required to follow the instructions and directions given by shippers whenever practicable. *United States Express Co. v. Kountze Bros.* 8 Wall. 353, 19 L. ed. 460; *Elliott on Railroads*, sec. 1490; *Rea v. Mobile & Ohio R. Co.* 7 I. C. C. Rep. 43. It is contended, however, by the defendants that joint through routes and rates are made by agreement between connecting carriers and those routes and rates are to be re-

garded as open to the public only upon such conditions as may be specified under the agreement; and it is pointed out that upon the traffic under consideration the through rate is guaranteed only upon condition that the routing shall be absolutely and unqualifiedly in the control of the initial carrier. Joint through routes and rates are ordinarily the subject of agreement between the participating carriers, but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use. Every continuous rail line or route authorized by the sixth section of the Act is of necessity constituted by two or more separate roads uniting by voluntary agreement and fixing joint through rates over the line thus formed. Such a route is in every instance as definite and specific a physical line as is either of the separate roads which constitute it. The formation of through routes is not compulsory, but when established and so long as they exist, the obligations, restraints and regulations of the law attach to them in all respects as fully as to a line composed of a single road. By the provisions of the sixth section of the Act, two kinds or classes of routes are recognized and provided for. The first is that of a single individual or separate road, which is required to print, keep open to inspection at stations along its line, and file with the Commission such rates of fares and charges for transportation as it may establish. The other is a continuous line or route operated by more than one carrier where the several carriers operating such a line or route establish joint tariffs of rates or fares or charges for such continuous line or route. In respect of both classes of these lines or routes the provision is uniform, that established rates shall not be increased except after ten days' notice, or reduced except after three days' notice, as in said section specified. There is no respect in which the provisions of the law differ in the matter of the rates for these classes of routes respectively except one, and that is merely that the Commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous or through routes, while as to the other class the law itself fixes this. This exception does not go to the form, substance, maintenance or application of the rates in any degree or respect whatsoever. The Commission in

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car distributor, who testified that no distinction was made between competitive and non-competitive points, but that he was more careful of the two to favor the non-competitive than the competitive station. We cannot upon the testimony so find, but do find the contrary. The complainant himself testified that he was a shipper from Norwalk to some extent on his own account, but to a greater extent upon account of the firm of Close, Peak & Hawkins, of which he was a member, and that it was always possible, and had been possible during the period in question, to obtain cars readily at Norwalk. Another shipper was introduced by the complainant, whose testimony was to the same import. It appeared that in some instances cars were shipped from Norwalk to non-competitive points billed by the station agent at Norwalk directly to the shipper at the non-competitive point. Under the system of car accounting which was in force upon the defendant's line, reports were received from each station daily showing the number of cars on hand and the number of cars called for. From this record in the possession of the defendant, it was possible to show exactly whether the statements of the complainant were true. It would appear what cars were ordered by the complainant at Kipton, when they were ordered, when they were furnished, and what treatment was accorded shippers at Norwalk and other competitive points during this period. The fact that the defendant has not produced these records tends to support the claim of the complainant.

Still further, the Traffic Manager of the Lake Shore Railroad testified that from August, 1900, up to April 1, 1901, there had been a shortage of cars upon his system of from 500 to 5,000 cars per day. That is to say, at the end of each day they were unable to fill orders for cars by that number. He further testified that during that period there were loaded on his system about 8,000 cars per day. From this it apparently follows that on the average the shipper was not required to wait more than a single day for the cars which he ordered.

Now it would not follow that a delay of more than one day, nor indeed of several days, at Kipton would therefore be an unjust discrimination. No rule is laid down as to the treatment which should be accorded competitive and non-competitive

points. We simply hold, upon the facts in this case, that a delay of from three to four months in furnishing cars to this complainant at that point was an unjustifiable discrimination against traffic at that station and against the complainant as a shipper of such traffic. Indeed, the Traffic Manager of the defendant substantially so admits in his testimony.

The complainant estimated upon the first trial that his damages by reason of the neglect of the defendant to furnish cars at Kipton were \$75. Upon a subsequent hearing, some months later, he asked leave to revise this estimate, and stated that in view of subsequent developments the damage to him was \$100. The testimony of the complainant with respect to this matter was not as detailed as it perhaps should have been. But he stated the elements which entered into that damage, and from this statement it was evident that the damages were substantial. The defendant did not attack his estimate upon cross-examination, and we are inclined to award damages in that amount.

While the period covered by this investigation was only that above indicated, the complainant testified that he had been for years a shipper over the road of the defendant; that he had for a long time experienced the same difficulty as in the instances particularly complained of; and that he only turned to this proceeding as a last resort. There is nothing in this case which fairly shows that the defendant has ever singled out this complainant for persecution or discrimination, nor can we believe such to be the fact, but we do think that the defendant is likely to discriminate against these small non-competitive stations, and that this should be avoided in the future.

Upon the foregoing findings of fact, the complainant is entitled to an order for the payment, on or before June 1, 1902, of the sum of Two Hundred Dollars, and such an order will issue.

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S. J. HAWKINS
v.
WHEELING & LAKE ERIE RAILROAD COMPANY.

Decided April 23, 1902.

During the period between September 3, 1900, and March 6, 1901, the defendant distributed cars for the movement of traffic in such manner as to discriminate in marked degree against complainant who desired to ship freight from Hartland, Clarksfield and Brighton, O., non-competitive stations, in favor of shippers at Norwalk, O., and other competitive stations. *Held*,—That this was unlawful discrimination against complainant, his traffic, and such non-competitive stations in favor of the competitive stations, shippers therefrom and traffic there originating. That complainant is entitled to reparation for damages thereby sustained in the amount of \$100.

P. J. Farrell for complainant.

C. A. Seiders for defendant.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant is a resident of the State of Ohio, and a shipper of hay from certain points upon the line of the defendant in that State to points without the State over the railroad of the defendant and its connections. He claims damage for discrimination in the furnishing of cars to be used in this service. The period covered is the same as in the preceding case—*Hawkins v. Lake Shore & Michigan Southern Railway Company*—namely, from September 3, 1900, to March 6, 1901. The two cases were heard together and are similar in many respects.

The stations involved in this case are Hartland, Clarksfield and Brighton. In the early fall of 1900—August or September

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ber—the complainant ordered six or seven cars for Hartland, five or six for Clarksfield, and three for Brighton. He claims that none of these cars were furnished for a considerable time, and the last of them not until January following. The defendant contends that there was not this delay, but one of its agents admits that there was a delay of 30 or 40 or perhaps 50 days.

The testimony upon this point is not satisfactory. The complainant himself did not transact the business at these stations, and his representatives had no memoranda from which to testify and no very distinct recollection. The agents of the defendant testified entirely from memory. It fairly appeared that the defendant had record evidence from which the exact fact might have been shown, but this was not produced upon the hearing. We are inclined to think, and find, that there was a delay in the furnishing of these cars of from one to four months.

There appears to have been more or less friction between the complainant and the defendant with respect to ordering and obtaining cars. The defendant insisted that the complainant put in a blanket order for more cars than he could have used had they been furnished; that he did not compress his hay as densely as others, and could not therefore load into an ordinary car the 20,000 pounds minimum weight, and for this reason refused to use cars which others did use, all of which the complainant denied. The defendant further insisted that the complainant refused to give the destination of cars, and that for this reason it was unable to borrow them from its connections. This the complainant admitted, stating, however, that he would give destinations if cars could be promptly furnished. The defendant also insisted that the complainant himself had been negligent in loading and billing out cars after they had been actually provided, and this appears to have been in some instances true.

The complainant alleges discrimination in favor of his competitors at these points, and it appears that in two or three instances other shippers were furnished cars to which the complainant would have been entitled by right of his earlier order. This preference was due to the fact that these cars were billed from Norwalk directly to the favored shipper, a practice which was stopped by the car service superintendent of the defendant as soon as it came to his notice. It does not appear how many

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instances of this kind there were, nor exactly when they occurred, nor to what extent the complainant was damaged by reason of not receiving these cars. The substantial charge is that the defendant unduly discriminated against these small stations which are non-competitive in favor of its competitive stations like Norwalk. The testimony here is the same as that in the previous case against the Lake Shore, and shows that generally and during the period in question it has been possible to obtain cars at all times upon short notice at these competitive points.

The defendant set up the existence of the car famine referred to in the former case as an excuse for its delay in supplying these cars, and there is no doubt about the reality of the scarcity alleged. The car service superintendent of the defendant testified that for sixteen years he had been connected with the distribution of cars upon railways, and that he had never known as serious a shortage as had existed during this period from about August 1, 1900, to April 1, 1901. Coming to details he stated that his line had been short during that period an average of from 200 to 300 cars each day. He did not state the average number of cars loaded each day, but the Wheeling & Lake Erie Company operates nearly 400 miles of railway, and must have shipped every day nearly or quite this number of carloads. He also testified that his line was a poor road, not able to own many cars of its own, and therefore under an especial embarrassment in times like that through which it had just passed in borrowing cars from connections.

No exact rule can be laid down to govern the general distribution of cars between different localities and different species of traffic. Shippers must be reasonable in their demands and carriers diligent and honest in meeting those demands. In times of temporary car famine a railroad can only be required to do its best and to treat its patrons without undue preference. We do not undertake to state any general principle governing the apportionment of cars between competitive and non-competitive points, but upon the facts of this case we do hold that this defendant has been guilty, in neglecting to furnish the complainant with cars at these points for the periods stated, of gross and undue discrimination against these non-competitive stations.

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against the traffic at these stations and the complainant as a shipper of this traffic.

The complainant testified that his damages were \$150, by reason of neglect to furnish these cars, and stated in some measure the elements of this damage. In one case he was obliged after waiting a long time to car certain hay at Wellington, a station upon the C. C. C. & St. L. Railroad, at an additional expense. Hay was cheaper when finally shipped than it had been earlier in the season, when it would have been sent to market had cars been furnished. The defendant did not attack upon cross-examination the accuracy of the complainant's estimate. It is evident that very substantial damages may result from neglect to provide cars, although an exact statement of these damages must ordinarily be difficult. It is also evident that the complainant has incurred substantial damage in this case, but we feel that he has not been entirely without fault himself, and has perhaps somewhat overestimated the amount of that damage, which we find to have been One Hundred Dollars.

Upon these facts the complainant is entitled to recover of the defendant the sum of One Hundred Dollars, and an order will be issued directing the defendant to pay the complainant that amount on or before June 1, 1902.

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THE RED CLOUD MINING COMPANY
v.
THE SOUTHERN PACIFIC COMPANY.

Decided April 30, 1902.

A tariff fixing a rate on machinery from Erie, Pa., to Salton, Cal., having been legally established, it was the duty of the defendant to apply the rate so published and in effect upon a shipment made by complainant between those points; and if, as claimed by complainant, a contract was made with defendant for a lower charge upon that shipment, such contract was not binding and its violation furnishes no ground for redress under the Act to regulate commerce.

Mr. George L. Sanders for complainant.

Mr. W. F. Herrin for defendant.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman*:

The controversy in this case, which relates to the charges on a carload of machinery, arises upon the following facts:

The complainant is a corporation organized under the laws of California and engaged in the business of mining at Salton in that State. The defendant is an interstate carrier subject to the provisions of the Act to regulate commerce. Its line of railway from the east enters the State of California near the city of Yuma, Arizona, and extends to Los Angeles, which is one of its Pacific Coast terminals. Los Angeles has a population of upwards of 100,000, and is a commercial city of much importance. The station of Salton is located on this line about 155 miles southeast of Los Angeles. It appears to be an inconsiderable place and is reached by no other railroad.

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In the month of October, 1900, the complainant shipped a carload of machinery from Erie, in the State of Pennsylvania, to Salton. This shipment seems to have been carried by the Lake Shore & Michigan Southern from Erie to Chicago, thence by the Chicago, Rock Island & Pacific to Fort Worth, Texas, thence by the Texas & Pacific to El Paso, Texas, and thence by the Southern Pacific to Salton.

Prior to making this shipment the complainant's president, Mr. S. P. Creasinger, had an interview with an agent or representative of the Southern Pacific Company at its office in the city of Los Angeles. There is rather sharp dispute as to what was said and what arrangement made at that interview. Mr. Creasinger is positive it was agreed that this carload of machinery would be brought to Salton by the Southern Pacific and its connections in shorter time and as cheap, or at the same rate, as it would be brought by any other route or carrier to Los Angeles. On the other hand, the representative of the Southern Pacific, Mr. Ocheltree, is equally positive that the agreement was to transport the shipment as quickly and cheaply, or at the same rate, as any other route or carrier would transport it to Salton. As no rate or amount of charges appears to have been named at the time by either party, it is not impossible, perhaps not unlikely, that there was an honest misunderstanding between them. Mr. Creasinger may have had in mind rates to Los Angeles, where the conversation occurred; Mr. Ocheltree may have supposed that he meant rates to Salton, where the shipment was to be delivered. However that may be, it is unnecessary to determine the question of veracity, as the ruling must be against the complainant, for reasons hereinafter stated, even if Mr. Creasinger's version of the facts is correct. Both parties agree that the freight charges were to be paid at Los Angeles instead of Salton, and an arrangement to that effect was undoubtedly made.

When this carload of machinery arrived at Salton, Mr. Creasinger, who was then in Los Angeles, received a telephone message advising him of the fact, and that the freight charges were \$340. He thereupon sent a check for that amount to the agent of the defendant company.

Some two or three days later Mr. Creasinger was informed

that there was an additional charge on this shipment of \$141.44, which he at first refused to pay. The company refusing to deliver the property until this further sum was paid, Mr. Creasinger not long after paid the same under protest, and the property was thereupon delivered. At this time, as we understand, an expense bill was rendered purporting to show the transportation of this car of machinery from Los Angeles to Salton at a charge of \$144.44, with advance charges of \$340, making a total of \$481.44. There was in fact no such transportation of the car in question. It was not taken to Los Angeles, but stopped off at Salton, which, as above stated, was the destination of the shipment. There was testimony to the effect that a prior expense bill for \$340 was rendered when that amount was paid, but Mr. Creasinger was unable to find it and it was not produced at the hearing.

There is a special commodity rate of \$1.25 per hundred pounds on carload shipments of machinery from the North Atlantic seaboard, including Erie, Pa., to Los Angeles, but there is no such rate applying to Salton. Shipments from Erie to the latter place would be governed by the class rate in force at the time, except as hereinafter stated, and such class rate appears to be \$2.08 per hundred pounds. The local rate from Los Angeles to Salton on traffic of this description is 52 cents per hundred pounds, and this rate, as we understand, is fixed by the California State Commission.

It is a rule of the carriers, which appears upon the trans-continental tariffs, to make rates to an interior and intermediate point like Salton by a combination of the special commodity rate to Los Angeles plus the local back to Salton, when that combination would make a lower charge to Salton than the class rate to that point. The charges on this carload of machinery were made in that way, viz., the commodity rate to Los Angeles of \$1.25 per hundred pounds, added to the local rate from Los Angeles to Salton of 52 cents per hundred pounds, a total of \$1.77, which on a shipment of 27,200 pounds, the weight of the carload in question, makes an aggregate charge of \$481.44, the amount which complainant was required to pay. The rate actually applied, therefore, was the

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regular tariff rate in effect at the time this carload was transported.

It is claimed that the lower commodity rate to Los Angeles is forced upon the carriers by water competition between Atlantic Coast points and Pacific Coast terminals, and the fact of such competition was virtually admitted. The testimony tending to establish this competition was given by Mr. Sproule, Freight Traffic Manager of the Southern Pacific, and the general fact respecting such competition has been shown in various cases before the Commission.

There is no evidence that the aggregate amount charged on this shipment was unreasonable, and it cannot be so found in the absence of proof.

From this brief statement, which covers the facts deemed to be material, it appears that the rate imposed upon the machinery in question was the legally established tariff rate in force at the time on traffic of this description. It was the duty of the carrier to apply that rate, and deviation therefrom would have been unlawful. The complainant's case rests wholly on an alleged contract for a lower and unauthorized rate. Granting that such a contract was made, precisely as claimed by Mr. Creasinger, it was not binding upon the defendant company, and its violation furnishes no ground for redress under the Act to regulate commerce.

It is unnecessary to extend argument or comment in support of this proposition. The question has been decided by the court of last resort and is no longer open to discussion.

Gulf, Colorado & Santa Fé Ry. Co. v. Hefley, 158 U. S. 98, 39 L. ed. 910, 15 Sup. Ct. Rep. 802.

Upon the record in this proceeding the Salton rate must be presumed reasonable, but nothing herein found or decided will preclude further consideration of that question should occasion therefor hereafter arise.

An order will be entered dismissing the complaint.

CLEMENTS, *Commissioner, dissenting*:

As seen in the report of the Commission, the rate complained of from Erie, Pa., to Salton, Cal., is made by the addition of the rate from Erie through Salton to Los Angeles, 155 miles
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beyond, to the full local rate from Los Angeles back to Salton. These two rates thus added make the rate from the same point of origin for the shorter haul to the nearer point. They are each constructed for a service totally different from that actually performed, and to which the sum of the added rates is applied. The through rate from Erie to Los Angeles is made for an actual haul between these places and the two necessary terminal services involved; one at the point of origin and one at the point of delivery. The rate from Los Angeles to Salton is a strictly local charge made at the higher rate per ton per mile for an actual haul of 155 miles, and two like terminal services as in the other case. The result of this method of rate making to local non-competitive points is well illustrated by the charges set forth in the findings of fact in this case on the particular shipment therein referred to. On a single carload of mining machinery from Erie, Pa., to Salton, Cal., the charges thus added and collected amounted in gross to \$481.44. One of the factors of this gross charge was the sum of \$141.44, the amount of the charge for a local haul from Los Angeles to Salton, and the two terminal services involved, no part of either of which was in fact performed in respect to this shipment. The other amount going to make up the aggregate charge above stated of \$481.44, was the amount of the through rate from Erie to Los Angeles, \$340.

Upon these facts and for the reasons stated by me for dissenting from the conclusions of the Commission in the case of *A. W. Holdzkom v. Michigan Central Ry. Co.* and others, 9 I. C. C. Rep. 42, decided April 13, 1901, I am unable to concur in the conclusions reached in this case.

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CHARLES H. JOHNSON

v.

THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; THE SIOUX CITY & PACIFIC RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE OMAHA & ST. LOUIS RAILROAD COMPANY; THE WABASH RAILROAD COMPANY; THE FREMONT, ELKHORN & MISSOURI VALLEY RAILWAY COMPANY; THE UNION PACIFIC RAILROAD COMPANY; THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY; and THE MISSOURI PACIFIC RAILWAY COMPANY.

HIBBARD, SPENCER, BARTLETT & CO., Interveners.

Decided May 7, 1902.

1. The failure of the C., St. P., M. & O. Railway Company to publish through freight rates from Chicago, Ill., and other points to Norfolk, Neb., while such through rates are established and published by that company in connection with other carriers to other points on its line in Nebraska amounts to unlawful discrimination against Norfolk.
 2. Posting a notice in a station or depot that the tariff sheets of the railroad company may be found in some other place is not compliance with the provision in the sixth section of the Act requiring the posting of rate schedules or tariffs in every such depot or station.
 3. The freight rates in effect from Chicago, Ill., to Norfolk, Neb., and from Duluth, Minn., to Norfolk are unjust and unreasonable; and upon the facts and circumstances shown in this case the rates from Chicago to Norfolk should not exceed those in force from Chicago to Columbus, Neb., and the rates from Duluth to Norfolk should not exceed the rate in force from Duluth to Emerson, Neb., added to the present local rate
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in effect from Emerson to Norfolk. The complainant's claim for reparation denied.

Spencer Smith, F. H. Free and C. H. Johnson for complainant.

James W. Orr for Mo. Pac. Ry. Co.

B. T. White for S. C. & Pac. R. R. Co., C. & N. W. Ry. Co. and F. E. & M. V. Ry. Co.

S. F. Andrews for Ill. Cent. R. R. Co.

Thomas Wilson for C., St. P., M. & O. Ry. Co.

James E. Kelby for C., B. & Q. R. R. Co.

A. C. Bird for C., M. & St. P. Ry. Co.

J. J. Wait for Hibbard, Spencer, Bartlett & Co.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

Charles H. Johnson, the complainant in this case, is a dealer in furniture, carpets, pianos, organs, sewing machines, china, glassware and queensware, in the city of Norfolk, Nebraska, where he resides. Complainant alleges that the defendant railroad companies operate lines as common carriers from points in the States of Illinois, Iowa, Minnesota, Wisconsin and Missouri to points in the States of Nebraska, Kansas and North and South Dakota; that the Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Union Pacific Railroad Company failed to keep posted in a public place at the joint station occupied by them at Norfolk the published tariffs or schedules of rates as required by section 6 of the Act to regulate commerce. It is generally alleged that all the defendant carriers discriminate against complainant and the city of Norfolk. The following are the distinguishing features of the complaint:

1. That the C., St. P., M. & O. Co. refuses to make a tariff of freight rates from Chicago to Norfolk, Nebraska, although that Company publishes and maintains a schedule of rates from Chicago to almost every other point on its lines of railroad.

2. That the C., St. P., M. & O. Co. refuses to haul freight from Sioux City to Norfolk when such freight is tendered to it by competing lines at Sioux City, and that when complainant

orders freight shipped from eastern points to Norfolk via the C., St. P., M. & O. lines it is diverted by the Chicago & Northwestern Railway Company, hereinafter referred to as the Northwestern Company, and forwarded to Norfolk over the line of the Fremont, Elkhorn & Missouri Valley Ry. Co., hereinafter called the Elkhorn Company, via Blair and Fremont.

3. That the C., St. P., M. & O. Co., the Sioux City and Pacific Railroad Co., the Northwestern Co. and the Elkhorn Co., together and separately, refuse to make a tariff or receive freight at Council Bluffs, Iowa, or at Omaha, Nebraska, when destined to Norfolk via the line of the C., St. P., M. & O. Co.

4. That the C., St. P., M. & O. Co., the Elkhorn Co. and the Sioux City & Pacific R. R. Co. maintain a schedule of rates between Sioux City, Iowa, and Norfolk, Neb., which, when compared with rates from Sioux City to other localities no more, and in some instances less, favorably situated are unreasonable and unjust.

5. That the defendant railroad companies by agreement and combination maintain an exorbitant, unreasonable and illegal rate from Sioux City, Iowa, to Norfolk, Neb., and so divert Chicago freight that it will go via the line of the Elkhorn Company, or the Union Pacific Company, through Blair and Omaha, respectively, although the route via Sioux City over the C., St. P., M. & O. line to Norfolk is shorter.

6. That towns in the State of South Dakota and Nebraska no more advantageously located than Norfolk, and in some instances not as favorably located with reference to distance, enjoy lower rates from Chicago, St. Louis, Minneapolis, St. Paul and Sioux City than are granted to the merchants and dealers of Norfolk.

7. That other towns in the States of South Dakota and Nebraska enjoy through rates from Chicago and common points and Mississippi River and common points which are less than those allowed Norfolk, although no more favorably situated with reference to the trade centers mentioned.

8. That the rates from Chicago and Mississippi River common points to Norfolk are not through rates as compared with rates to other localities in Nebraska, Kansas and South Dakota,
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but are made up of the rate to the Missouri River from eastern points and the added locals from the Missouri River west, and are much higher for practically the same character of service than those made to other cities and towns with which Norfolk comes in competition; and that as a result of this discrimination the city of Norfolk is prevented from becoming a distributing center or manufacturing point.

9. The complainant asks that the city of Norfolk be placed on the same basis with reference to through rates as are Fremont and Lincoln and places equally distant from Sioux City located in South Dakota, Iowa and Nebraska; and that the Union Pacific Railroad Company, and the C., St. P., M. & O. Company, be required to post their schedule of rates in a conspicuous and accessible place in the station house at Norfolk.

Each of the defendants denied generally and specifically all violation of law charged against them, and also denied that any undue, unjust or illegal discrimination is practised towards complainant or the merchants of Norfolk.

An intervening petition was filed by Messrs. Hibbard, Spencer, Bartlett & Company, a wholesale hardware corporation of Chicago, alleging that the defendant carriers give undue and unreasonable preference and advantage to wholesale merchants at St. Paul and Minneapolis, and that intervener is subjected to undue and unreasonable prejudice and disadvantage by the defendants charging more for a like and contemporaneous service on shipments from Chicago destined to Norfolk than is charged from St. Paul and Minneapolis; it also asks for an order commanding defendants to cease from said alleged violation of the law.

The original complaint herein was filed with the Commission August 22, 1899, and subsequently during the hearing at Norfolk, February 27, 1900, an amendment was filed alleging illegal discrimination against Norfolk by the defendant railroad companies in coal rates from Wyoming, Duluth, and Iowa to Norfolk.

In the course of the investigation of this case, while the complaint was principally urged against the C., St. P., M. & O. Ry., the F., E. & M. V. Ry. Co., the S. C. & P. R. R. Co., and the C. & N. W. Ry. Co., it was practically abandoned as far as re-

lates to the Union Pacific R. R. Co., the C., M. & St. P. Ry. Co., the C., R. I. & P. Ry. Co., and other defendant companies not included in those above named.

STATEMENT OF FACTS.

The complainant is a dealer in furniture, musical instruments, crockery, etc., at Norfolk, a town located in the north-eastern part of the State of Nebraska, about 60 miles west of the Iowa line and the same distance south of the line of South Dakota. It has a sugar beet factory with an invested capital of \$750,000, with an annual product of about 7,000,000 pounds, a central creamery establishment which has a large number of sub-stations in neighboring towns and an annual product of 2,000,000 pounds, a cold storage plant, an iron foundry, and such other retail stores and business enterprises as are usually found in a city of its size in an agricultural country. By the United States census of 1900 it contained a population of 3,883, about twice the population of any city in Nebraska west or northwest of Fremont.

The railways connecting with or reaching Norfolk are as follows: The C., St. P., M. & O. main line, extending southeast from Sioux City via Emerson and Blair to Omaha, a branch from Emerson to Norfolk, with two branches extending northwest, one from Wakefield to Hartington, and another from Wayne to Bloomfield. The Elkhorn Company has trackage rights over the Sioux City & Pacific from Blair to Fremont, and its main line runs west through Norfolk to the west line of the State with termini in Wyoming and South Dakota, and a branch running from Norfolk to Verdigris. It has branches running south and southwest from Fremont to Lincoln, Beatrice, Superior and Hastings, also from Scribner west and northwest through Humphrey, Albion, and Petersburg to Oakdale on the main line. The Sioux City & Pacific Railroad extends from Sioux City down the east side of the river to Missouri Valley, California Junction, and west across the river to Blair. These four roads constitute what complainant calls the Northwestern combination. The stock of the Elkhorn Company, the Sioux City & Pacific Railroad Company and 51% 9 I. C. C. REP.

of the C., St. P., M. & O. Company is owned by the Northwestern Company. The Great Northern Railway Company owns a line running west from Sioux City called "The Pacific Short Line" which crosses the Northwest branches of the C., St. P. M. & O. at Laurel and Randolph, and the Verdigris branch of the Elkhorn at Plainview, and terminates at O'Neill on the main line of the Elkhorn. The Union Pacific Railroad has a branch extending from Columbus on its main line north, terminating at Norfolk.

The following rates were in force to Norfolk from Chicago at the time of filing the complaint:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	1.25	1.03	.76	.55	.45	.50	.42	.35	.27½	.23

A reduction in rates to Norfolk was made August 22, 1900, which are now in force, as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	1.22	1.01	.74	.55	.45	.50	.42	.35	.27½	.23

These rates are made by adding the Missouri River rates from Chicago and common points to the local rates west from the Missouri River.

The rates from Chicago to Lincoln, which the complainant asks for Norfolk, are the result of a controversy between the Lincoln Board of Trade and the B. & M. R. R. Co. in Nebraska, and other roads, by which an agreed differential of 5 to 3 cents on the numbered and lettered classes of freight added to the Missouri River rate was given to Lincoln, and concerning which the Commission held that the disparity of rates to Lincoln and Omaha was found to correspond so closely with the difference in distances that no change was required upon that ground. (2 I. C. C. Rep. 147, 2 Inters. Com. Rep. 95.) In consequence of this, under the operation of the fourth section of the Act to regulate commerce, no higher rate is charged to towns intermediate between Lincoln and the Missouri River than is charged to Lincoln. The Missouri River rate of 80 cents from Chicago being in force at Sioux City it follows that Emerson, Fremont and other towns on the C., St. P., M. & O., and the Elkhorn lines, extending south from Sioux City to Lincoln, cannot have a high-

er rate than Lincoln, and accordingly take the first class rate of 85 cents.

While there is a maximum distance tariff established by the State of Nebraska it is not always recognized and followed by the railroads, each road having its own distance tariff, which however, is very nearly the same for any given distance as the State distance tariff when distance alone is the controlling factor.

Complainant makes extended comparison of through rates to Norfolk from Minneapolis, Duluth, Chicago, St. Louis, Kansas City and St. Joseph, with through rates from said places to many other towns in South Dakota, Nebraska and other States. The following tables of rates and distances will be sufficient for illustration.

Distances.	Between Chicago, Ill. and	Classes (in cents per 100 pounds).									
		1	2	3	4	5	A	B	C	D	E
569	Yankton, S. D.	91	73	51	37	31	37	31	25	21	18
510	Sioux City, Iowa....	80	65	45	32	27	32	27	22	18½	16
539	Emerson, Neb.	104	86	64	48	38	43	37	30½	26	21½
583	Hope, "	122	102	74	53	45	50	42	35	27½	23
585	Norfolk, "										
	April 11, 1899....	125	103	76	55	45	50	42	35	27½	23
	Aug. 22, 1900....	122	101	74	55	45	50	42	35	27½	23
505	Fremont, Neb.	85	70	49	36	30	35	30	25	21½	19
480	Blair, "	80	65	43	32	27	32	27	23	18½	16
490	Omaha, "	80	65	45	32	27	32	27	23	18½	16
542	Lincoln, "	85	70	49	36	30	35	30	25	21½	19
550	Columbus, "	115	95	72	53	43	46	40	33	26½	21½
593	Albion, "	125	103	81	59	48	50	43½	36	28½	23
617	Oakdale, "	131	111	83	60	50	55	45	37	29½	23½
640	O'Neill, "	143	118	89	68	55	64	52	42	33½	25½
590	Warnerville, Neb. ...	122	101	74	55	45	50	42	35	27½	23

Distances.	From Kansas City, Mo., To	Classes (in cents per 100 pounds).									
		1	2	3	4	5	A	B	C	D	E
195	Omaha, Neb.	40	30	25	20	18	17	12½	10	9	7
241	Fremont, "	51	41	34	27	19	23	17½	14	12	8½
323	Norfolk, "	75	65	55	42	34	32	25	21	18	14
272	Columbus, "	55	48	42	33	28	29	20	17½	13	9½
From St. Joseph, Mo., To											
132	Omaha, Neb.	40	30	25	20	18	17	12½	10	9	7
178	Fremont, "	50	43	35	25	19	23	16	14	11	7½
260	Norfolk, "	65	58	45	35	30	32	21	17	13	10
222	Columbus, "	51	45	38	30	26	25	18	15	11	7½

Distances.	From St. Louis, Mo., To	Classes (rates in cents per 100 pounds).									
		1	2	3	4	5	A	B	C	D	E
412	Omaha, Neb.	60	45	35	27	22	24½	19½	17	13½	11
458	Fremont, "	65	50	39	31	25	27½	22½	20	16½	14
508	Sioux City, Iowa....	80	65	45	32	27	32	27	22	18½	16
567	Yankton, S. Dak....	100	85	58	45	37	39	34	28	23	20
540	Norfolk, Neb.										
	May 5, 1899.....	105	83	66	50	40	42½	34½	30	22½	18
	Aug. 20, 1900....	102	81	64	50	40	42½	34½	30	22½	18
503	Columbus, Neb.....	95	75	62	48	38	38½	32½	28	21½	16½
464	Lincoln, "	65	50	39	31	25	27½	22½	20	16½	14

Distances.	From Minneapolis, Minn., To	Classes (rates in cents per 100 pounds).									
		1	2	3	4	5	A	B	C	D	E
322	Yankton, S. D.	71	53	41	32	25½	31	25	23	19	14
263	Sioux City, Iowa....	60	50	35	27	20	24	20	17	15	12
292	Emerson, Neb.	80	65	45	32	27	32	27	22	18½	16
338	Norfolk, "										
	July 26, 1898.....	80	65	45	32	27	32	27	22	18½	16
	March 19, 1900....	No change									
370	Oakdale, Neb.	106	88	65	49	39	44	36½	30	24½	19
398	O'Neill, "	119	99	77	59	47	49	39	34	26½	18½
365	Fremont, "	85	70	49	36	30	35	30	25	21½	19
382	Lincoln, "	85	70	49	36	30	35	30	25	21½	19
388	Columbus, "	115	95	72	53	43	46	40	33	26½	21½

Distances.	From Duluth, Minn. To	Classes (rates in cents per 100 pounds).									
		1	2	3	4	5	A	B	C	D	E
382	Sioux Falls, Neb.	80	65	45	32	27	32	27	23	18½	16
471	Yankton, S. D.	91	73	51	37	31	37	31	25	21	18
412	Sioux City, Iowa.	80	65	45	32	27	32	27	22	18½	16
441	Emerson, Neb.	80	65	45	32	27	32	27	22	18½	16
514	Fremont, "	85	70	49	36	30	35	30	25	21½	19
541	Lincoln, "	85	70	49	36	30	35	30	25	21½	19
512	Humphrey, "	122	101	76	55	45	50	43	35	27½	22
542	O'Neill, "	143	118	89	68	55	63	51	42	33½	26½
487	Norfolk, "										
	Dec. 30, 1898.	125	103	76	55	45	50	42	35	27½	23
537	Columbus, Neb.	115	95	72	53	43	46	40	33	26½	21½

Referring to the rates in force from Chicago to Sioux Falls, Yankton and other points in South Dakota, the Great Northern Railroad having extended its line through Sioux Falls into Southeastern Dakota, and following an investigation by the Commission in which the rates and competitive conditions existing at Sioux City and other points were under consideration, an order was made fixing the through rate to Sioux Falls at not more than 104% of the rate to Sioux City.

Complainant offered in evidence a number of expense bills for the purpose of showing that he had been charged a greater sum for a like service by railroads entering Norfolk than was charged to other towns on the same or different railroads.

Considerable prominence is given to the fact that while the through rate from Duluth to Sioux City, 412 miles, is 80 cents, first class, to Emerson, 29 miles from Sioux City the rate is 80 cents; and from there south to Lincoln, 147 miles, and all towns intermediate the same rate of 85 cents prevails, while to Norfolk, only 45 miles from Emerson, the rate is \$1.25, and to Humphrey, 24 miles south of Norfolk, the rate is \$1.22.

It is also shown that the through rate from Chicago first class, to Omaha, Blair and Sioux City, is 80 cents, and that it is 85 cents to Lincoln, 77 miles beyond Blair, while to Norfolk, 105 miles beyond Blair, it is \$1.22.

It thus appears that the rates per ton per mile to Lincoln, 9 I. C. C. REP.—16.

cents, and if the St. Louis freight is consigned to Norfolk over the same line the rate is \$1.05; and that all freight which originates at St. Louis, Duluth or Chicago consigned to Norfolk carries a higher proportional rate than if it originates at intermediate points, Minneapolis, Kansas City and St. Joseph.

The C. & N. W. Ry. joint tariff, I. C. C. No. 2443, in effect at the time of filing of complaint, fixes through rates from Chicago to all stations on the Nebraska division of the C., St. P., M. & O. line, including Hoskins, eight miles from Norfolk, and Hope, two miles from Norfolk, but Norfolk is excepted, although it is the terminus of one of its principal branches and several times the size of any other town on its Nebraska line except Omaha. The tariff referred to shows a rate to Hope, where there is neither station, agent nor platform, and the train which hauls the freight to Hope has to go on to Norfolk, the terminus of the branch track, before it can turn around and go back to Sioux City. It was admitted by the General Manager of the Elkhorn Company, in his testimony taken at Norfolk, that for points on the Elkhorn road west of Norfolk there is a traffic arrangement between the Elkhorn and the C., St. P., M. & O. Company by which the freight which starts at Sioux City goes across to Norfolk on the C., St. P., M. & O., and from thence west on the Elkhorn.

It also appears that the classification has been raised on many articles of freight so that, for example, an article which was carried for \$1.25 first class to Norfolk, is now charged one and a half times first class, \$1.87½. It is also shown that the minimum weight per car of freight has been increased, as for example, furniture to 16,000 pounds, and that under this arrangement complainant finds it impossible to load 16,000 pounds of certain kinds of mixed loads in a car, although for a single article, such as chairs, that amount may be packed in a car, and that as a result the wholesale dealers at Omaha and Lincoln who order large quantities of manufactured goods have an advantage over complainant.

There is no evidence showing discrimination in rates on lumber from the north and east to Norfolk, on which the rate to Omaha is 15 cents, and to Norfolk 22 cents, and from Minneapolis to Norfolk 20 cents. The rate on slack or steam coal from 9 I. C. C. REF.

1911

1912

1913

1914

1915

1916

1917

1918

1919

1920

1921

1922

1923

1924

1925

1926

It is established by the evidence that several wholesale or jobbing enterprises were started in Norfolk which might perhaps have remained in business there permanently if through rates to Norfolk from the east, or local rates out, had been adjusted on a lower basis, but on account of existing rate conditions they were compelled to abandon Norfolk.

It was conceded by the General Manager of the Elkhorn Company that there is no city in Nebraska anything like the size of Norfolk, of similar distance from the Missouri River, that has anything like as high freight rates.

On the other hand, it is found that the territory within which Norfolk could reasonably expect to build up a jobbing business is, under present conditions, somewhat limited. After passing a line running north and south 50 miles west of Norfolk the country is of less value for the purposes of agriculture, and in this respect its value decreases going westward to a point about 180 miles northwest of Norfolk, and from there to the west line of the State is what is known as the "Sandhill Country" without any enterprises of importance except cattle raising, and that business is rapidly diminishing in volume. This condition is evidenced by the fact that while the population of Madison County, in which Norfolk is situated, and Antelope County next west of it, had considerable of an increase in population since 1890, the counties westerly, except Cherry and Brown Counties, have suffered a decrease of population, in some instances as much as 33%, as shown by the following statement taken from the United States Census of 1900:

County	1890	1900
Madison.	13,669	16,976
Antelope.	10,399	11,344
Holt.	13,677	12,224
Rock.	3,083	2,809
Brown.	4,359	3,470
Cherry.	6,428	6,541
Sheridan.	8,687	7,756
Dawes.	9,722	6,215
Sioux.	2,452	2,055

Fremont, Sioux City and Lincoln have enjoyed the low through rates from eastern points which Norfolk has been de-
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nied. The following official figures show the population for those cities respectively for 1890 and 1900:

City	1890	1900
Omaha.	140,452	102,555
Lincoln.	55,154	40,169
Fremont.	6,747	7,241
Sioux City.	37,806	33,111
Norfolk.	3,038	3,883

The Elkhorn Company has established at Norfolk its terminal offices, local repair shops and office of Superintendent. About 200 of its employees reside there, and about 1,000 of the inhabitants of Norfolk derive their support from the railroad.

The products of the State are carried to the eastern markets at a lower basis of rates than are charged on commodities brought there for consumption. There is a 10 cent per hundred rate on beet sugar from Norfolk to Omaha, while the rate on sugar, Omaha to Norfolk, is 18 cents per hundred by the carload. The rate for hauling cream to Norfolk is 50 cents per ton for 25 to 100 miles. Railroad traffic from the western part of the State is limited. No large bodies of coal are located on the Elkhorn line. Vegetables are grown to a limited extent in the vicinity of Gordon and Chadron in the northwestern part of the State; the total shipment of potatoes over the Elkhorn line for 1899 was about 500 carloads. About 7,000 cars of livestock are shipped east over that line annually, while the shipment of livestock west amounts to from 400 to perhaps 2,000 carloads. Not over 100 cars of ore are carried annually to the Omaha smelters. The principal part of railway transportation in the State of Nebraska is south of the Platte River where the country is much more productive—territory to which Fremont and Lincoln are tributary. The following table compiled from the annual reports of the C., St. P., M. & O. Company and the Elkhorn Company to the Interstate Commerce Commission show their financial condition and the results of their operations in the way of surplus or deficit:

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Statement Compiled from Annual Reports of Railway Companies Named for Years ending June 30, 1899 to 1893.

Name of road.	Year ending June 30.	Gross earnings.	Income from other sources.	Operating expenses.	Deductions from income.	Dividends.	Surplus from operations.	Freight revenue.	Average receipts per ton per mile.
Chicago, Saint Paul, Minneapolis and Omaha Railway Company	1899	\$10,476,497	\$159,245	\$6,314,606	\$1,831,798	\$1,437,261	\$1,052,077	\$7,827,559	00.969
	1898	9,001,567	46,186	5,696,872	1,787,155	1,158,970	405,256	6,708,892	00.976
	1897	8,099,800	103,420	4,847,885	1,766,826	1,158,958	429,551	5,995,918	01.023
	1896	8,117,233	185,830	5,027,726	1,769,427	787,976	717,434	5,888,094	01.127
	1895	6,668,322	217,677	4,391,786	1,724,706	787,976	13,419	4,567,987	01.179
	1894	8,075,900	223,065	5,183,357	1,766,698	787,976	560,934	5,735,945	01.116
	1893	9,190,820	108,590	6,328,756	1,792,535	787,976	390,148	6,628,702	01.118
Fremont, Elkhorn and Missouri Valley Railroad Company	1899	3,961,803	-----	2,531,003	1,192,331	-----	258,469	2,832,854	01.445
	1898	3,966,958	-----	2,515,776	1,195,516	-----	255,686	3,057,465	01.455
	1897	3,103,681	-----	2,106,724	1,183,866	-----	186,409	2,301,601	01.547
	1896	2,972,104	-----	1,981,446	1,185,819	-----	145,161	2,123,577	01.558
	1895	2,635,480	-----	1,752,519	1,231,513	-----	139,552	1,784,671	01.701
	1894	3,259,637	-----	2,017,009	1,245,687	-----	13,009	2,316,126	01.678
	1893	3,590,965	-----	2,232,686	1,266,482	-----	101,847	2,492,866	01.578

Deficit.

Considerable evidence was submitted showing the effect of putting in Lincoln rates at Norfolk, and a table was offered in evidence for the purpose of showing the extent of country over which such a change in rates would be felt—and, among other things, that it would result in a reduction of 31% in rates to all points between Norfolk and Sioux City, Fremont and Lincoln, and that it would almost entirely wipe out the revenue of the C., St. P., M. & Co. and the Elkhorn lines derived from business in a large part of the State of Nebraska.

The testimony sustains the allegations of complainant that no printed schedules of rates, fares or charges, or tariff sheets, were publicly posted in the station house of the C., St. P., M. & O. Company at Norfolk. It was shown, however, that a printed notice was posted on the wall inside of the station stating that "The Agent is supplied with a complete file of freight tariffs and rates of fare applying to and from this station," and that "He is instructed to submit these tariffs and rates of fare to the inspection of any one desiring to make shipments or to travel, and to explain fully such tariffs and rates and the manner in which they are obtained."

CONCLUSIONS.

Referring to the complaint that the C., St. P., M. & O. Ry. refused to make and publish a through tariff of rates from Chicago to Norfolk, it will be observed that Norfolk, although the largest town, except Omaha, on the line of that road in Nebraska, is not named in any through tariff from Chicago, Duluth, or points east of those cities. It is shown, however, that the Elkhorn Company and the C., St. P., M. & O. Company agree upon a tariff by which freight is hauled over the line of the latter Company to Norfolk, and there transferred to the tracks of the Elkhorn for towns west of Norfolk. This subject was considered by the Commission in the case of Lehman, Higginson & Company heretofore cited, where the Commission held that "a straight rate to every point on a line, and duly shown on the tariff sheets, is undoubtedly the correct method." Norfolk is a point on the line of the C., St. P., M. & O. Ry., and, therefore, should be named on every tariff of that Company re-

lating to stations on that branch of the road; and the same rule applies to joint tariffs between that Company and the Elkhorn or any other company: the failure to do so results in unjust discrimination.

The complaint that the C., St. P., M. & O. Ry. Company does not post its tariff sheets at its station at Norfolk in a conspicuous place accessible to the public is sustained by the evidence; the posting of a notice on the wall of the station stating where such tariff sheets may be found is not a sufficient compliance with the requirements of the law. In the case of *Rea v. Mobile & Ohio R. Co.* 7 I. C. C. Rep. 50, it was held that "the Commission has no power, if it were so disposed, to vary the requirements of the Act in that respect," and that "under no circumstances could there be any excuse for a failure to post changes in tariffs when made." The circumstances connected with the posting of tariffs in that case were similar to those shown by the evidence to exist in this case,—that tariff sheets were defaced or torn from the walls. There is no doubt but that it was the intention to comply as far as seemed practicable with the provisions of section 6 of the Act. It is believed, however, that the local authorities can fully protect the tariff sheets from acts of vandalism or destruction if they are appealed to.

Complaint is made of the fact that the railways have established a minimum weight per carload of 16,000 pounds, and that such a weight of some classes of goods cannot be packed in a car. But it must be observed that the increased volume of railway traffic throughout the country has created a necessity and demand for larger cars and a more systematic method of packing and shipping freight. The average carloads now hauled by the railways is very greatly increased over the average of 15 or 20 years ago, so that small or mixed loads, as compared with large or maximum loads, must naturally bear a higher proportional rate per ton. It is not deemed suitable, however, upon the facts shown in this case, to make any decision respecting the minimum weights in question.

Complainant alleges that the classification of freight has been changed and raised by the railways on many articles of transportation, and the allegation is not controverted by the respondents. These changes, however, are general, affecting a large section of

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country including the State of Nebraska. There is no evidence of any special disadvantage or discrimination accruing to Norfolk thereby, or that the changes in classification result in unreasonable rates to Norfolk as compared with other stations in that section, and consequently, no opinion is expressed upon this feature of the case.

The situation of Norfolk seems to be somewhat unfortunate. There is railway competition in the towns immediately north in South Dakota, governing rates to Sioux Falls, Mitchell, Yankton and other points in that section; there is competition in southern and southeastern Nebraska, governing rates to Lincoln and other points in that section, and the "long and short haul" provision of the Act (Sec. 4) governs rates to intermediate points, resulting in "blanket" or "flat" rates to a number of stations,—like the blanket rate which begins at Emerson on the Chicago, St. Paul, Minneapolis and Omaha line and extends south through Tekamah, and Fremont and includes all stations between Emerson and Lincoln. But no competition exists at Norfolk. It was said by the General Manager of the Elkhorn Company that its most active competitor for transportation was the C., St. P., M. & O. Co.; but that Company does not publish a through tariff from Chicago to Norfolk, although it is twice the size of any town it reaches in Nebraska, except Omaha, and it is the terminus of one of its principal branches. Yet a through tariff is published by the C., St. P., M. & O. Company to almost every other station in Nebraska on its main line and branches.

It was conceded by complainant on the hearing that the rates to Norfolk were not unreasonable in and of themselves, but only relatively so as compared with other places with which Norfolk dealers come in competition.

Under the system of rate-making which obtains from eastern points to towns in the interior part of Nebraska there are only two things to be considered: the Missouri River rate, which is the same to all points on the river from Kansas City to Sioux City, and the local rates to interior points. The exception to this system of rate-making is found in the rates to eastern and southeastern Nebraska where the Lincoln arbitrary controls.

It is claimed by complainant that Norfolk is entitled to the same rates in force to Lincoln, Fremont and other towns on the

line of the C., St. P., M. & O. Company, between Sioux City and Lincoln, and in support of this contention reference is made to the distance and the rate for which freight is carried from Sioux City to these other towns,—for example, 5 cents over the Chicago rate to Sioux City for a haul of 176 miles from Sioux City to Lincoln, while 42 cents additional is exacted for the 74-mile haul from Sioux City to Norfolk. It has been shown, however, that the rate to Lincoln is due to certain competitive conditions which do not exist at Norfolk. Lincoln is a junction point, located on several of the principal railways in Nebraska, with wholesale and manufacturing enterprises long established; it is the principal interior city of the State, and its capital; and the rates there established are in consequence of the volume and the character of business, population, location and other important considerations. No comparison in most of these respects can be made between Lincoln and Norfolk. In *Lehman, Higginson & Company v. Southern P. Co.* 4 I. C. C. Rep. 1, 3 Inters. Com. Rep. 80, it was held that where a reduced rate is made to the terminus of a through route under the compulsion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route is not unjust discrimination. This principle the Commission believes is applicable to the present case.

That the haul from Sioux City to Norfolk, as well as from Fremont to Norfolk, costs less than the haul from either Sioux City or Fremont to Lincoln may be conceded, and the question arises whether the rate to Lincoln in view of the length of haul is remunerative to the railways. Defendants' witnesses testify that it is—that the railroad gets some profit from the traffic. It was held in the case of *Interstate Commerce Commission v. Western & A. R. Co.* 35 C. C. A. 217, 93 Fed. 83, that "if the competitive rates are something more than the additional cost of the movement of the traffic it is to the interest of the carrier and to the interest of the public that the carrier shall be allowed to compete for the traffic. The profit, however small, to the ex-

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tent that it inures, increases the revenues of the carrier and has a tendency to reduce local rates and to improve the local service. There may be a wide difference between a rate or amount of compensation that would give full remuneration for the service in carrying competitive traffic, and that remuneration therefor which the competitive conditions will allow the carrier to receive."

In the case of Lehman, Higginson & Company (above cited) it was held that the transportation of traffic under circumstances and conditions that force a low rate for its carriage, or abandonment of its business, but which affords some revenue above the cost of its movement, and works no material injustice to other patrons of the carrier, is to be deemed legitimate competition. When, however, its carriage is at a loss, and imposes a burden on like traffic at other points, and on through traffic, it is to be deemed destructive and illegitimate competition.

As a local town Norfolk has had considerable growth in the last ten years, even under the alleged discrimination in rates, as compared with Sioux City, Fremont, Lincoln and Omaha, which have enjoyed greatly lower rates and facilities for interior commerce. That a lowering of rates to the Lincoln figures would be of any material advantage is quite problematical. It would necessitate a similar reduction of rates to all stations between Norfolk, and Lincoln, Omaha, Fremont and Emerson, and a relative reduction to all points northwest and southwest in the State, possibly extending to the southern line of the State. The Commission does not believe, however, that such a reduction of rates to Norfolk would affect nearly so extensive a territory as that contemplated by witnesses for the defense, and cannot see the necessity or reason for any great disturbance of existing conditions.

The desire of Norfolk to be granted rates which would make it a distributing center is no doubt shared by every town in northeastern Nebraska, and such a reduction as is asked for would necessarily be followed by a proportionate reduction to other points which would give the dealers in all such towns similar advantages and through rates from eastern points, and naturally tend to defeat the very object of Norfolk's ambition; so

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that, as far as wholesaling is concerned, it would be in exactly the same condition as under existing rates.

Whether the rates to Norfolk as compared with rates to Fremont, Lincoln and other towns, are unreasonable must be determined from all the circumstances and conditions connected with the general situation. "The principle of relative justice applied is that when a carrier, by reason of competitive conditions or for other reasons, serves certain localities at very low rates, the concessions made must not subject other localities or other patrons dependent on the same carrier to undue or unreasonable prejudice or disadvantage, but there must be an equitable adjustment of rates, so that there is no unjust discrimination between competitors in like pursuits." *Manufacturers & Jobbers Union of Mankato v. Minneapolis & St. L. Ry. Co., et al.* 4 I. C. C. Rep. 79, 3 Inters. Com. Rep. 115.

That the Lincoln, Sioux City and Omaha dealers would enjoy the same through rates from Chicago they do now if the Elkhorn and C., St. P., M. & O. lines had never been constructed would no doubt be conceded, and that they would be enabled to compete for business at Norfolk and neighboring towns to perhaps the same extent as at present; so that the establishment of the existing rates on the Elkhorn and C., St. P., M. & O. lines created no new obstacles or disadvantages in the way of Norfolk trade or enterprise.

In the examination of rates in force to Norfolk it is observed that the 45-cent rate (now 42 cents) in effect between Sioux City and Omaha to Norfolk for local as well as eastern traffic, is not followed in the making of through rates from other points. The through rate, first class, from Minneapolis to Sioux City is 60 cents, and from Chicago 80 cents; the through rate from Minneapolis through Sioux City to Norfolk is 80 cents, and the through rate from Chicago through Sioux City (or by any other route) is \$1.22. The through rate from St. Joe, Mo., is 50 cents, first class, to Fremont, and the through rate from St. Joe, Mo., via Fremont to Norfolk is 65 cents; the through rate from Kansas City is 51 cents, first class, and the through rate from Kansas City via Fremont to Norfolk is 75 cents; the through rate from St. Louis to Fremont is 55 cents, first class, and the through rate from St. Louis via Fremont to Norfolk is \$1.05. The cost of
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Omaha, the disparity in rates as compared with the distances is too great.

The principal contention of defendants in opposition to the establishment of rates asked at Norfolk is the reduction in railway revenue, which it is alleged will result to the roads conducting the traffic and competing for Norfolk business. The Elkhorn Company urges that such a reduction would completely wipe out its surplus and leave a deficit in its finances,—that the reduction in rates contemplated would amount to 31% of its entire revenue from transportation in Nebraska, that such a reduction would amount to between \$250,000 and \$300,000, equal to its entire surplus for last year.

It is not the policy of the Government in the regulation of railways under the Interstate Commerce Law to require them to carry on the transportation business at a loss, but that they shall be fairly dealt with, and, having due regard to public as well as private interests, they shall rather derive a reasonable profit from their operations. In the case of *New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. Ry. Co. et al.* 2 I. C. C. Rep. 375, 2 Inters. Com. Rep. 289, the Commission held that the reduction there asked for “does not seem justifiable in view of the scant earnings and earning power of the road. That this road earns little more than operating expenses is not to be overlooked, but the fact cannot be made to justify rates grossly excessive. Wherever there are more roads than the business at fair rates will remunerate they must rely on future earnings for the return on investments and profits.”

In determining what would be fair and equitable rates to Norfolk a comparison of population and of rates and distances between eastern points and Norfolk and Columbus may be of some advantage. The two cities are located about 50 miles apart, Columbus being a little east of a north and south line through Norfolk. By the census of 1900 the population of Platte County, in which Columbus is located, was 10,542, while the population of Madison County, in which Norfolk is located, was 9,255. The population of Columbus was 3,522 and that of Norfolk was 3,883. The former is the junction point of the Union Pacific and Burlington roads, and the latter the junction of the C., St. 9 I. C. C. REP.

F., M. & O. and the F., E. & M. V. Roads. The railway distances from eastern points are as follows:

Chicago	to	Norfolk,	556 m.	Chicago	to	Columbus	550 m.
Omaha	"	"	119 "	Omaha	"	"	91 "
Lincoln	"	"	134 "	Lincoln	"	"	75 "
Sioux Cy.,	"	"	74 "	Sioux Cy.,	"	"	128 "

The rates between Chicago and Norfolk, however, are considerably higher than between Chicago and Columbus, and the difference furnishes an indication of the extent to which we regard the Norfolk rates as excessive. In other words, taking all the facts and circumstances into account, the reduction which we think should be made would give Norfolk the same Chicago rates as Columbus now enjoys.

As to rates from Duluth, it seems to us clear that Norfolk should not in any case be charged more than the rates to Emerson plus the local rates from that point to Norfolk. The combination on Emerson would give a slightly lower rate from Duluth to Norfolk than the proposed rate from Chicago to Norfolk, but the difference does not appear to be material.

Complainant asks that an order for reparation be made in the sum of \$8,000.00 on account of excessive freight rates paid to the railways during the past ten years, but the testimony is not sufficiently specific as to the items of freight upon which such charges have been made; and it further appears that the freight revenue received by the railroads during the larger portion of the time has been very little over operating expenses, while for some years it has resulted in a deficit; the Commission, therefore, would not be justified in making such an order.

An order will be entered in accordance with the foregoing opinion.

PROCTER, *Commissioner*, dissenting:

While I concur in the order that the defendant cease and desist from charging the present rates to Norfolk, I do not concur in the recommendation stating what those rates should be, for the reason that, in my opinion, if the tariff recommended by the Commission were put in effect such rates would still be unjust, unreasonable and discriminating as to Norfolk.

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The rates mainly involved in this proceeding are those from Duluth and Chicago. Some question is made as to rates from St. Louis and other points in the south and southeast, but while these seem to be anomalous, there is no sufficient testimony upon which to express an opinion of their justness, nor do they appear to be of much consequence to the city of Norfolk. The following map shows the location of Norfolk with respect to traffic from Duluth:



It will be seen that the Chicago, St. Paul, Minneapolis & Omaha Railroad runs from Duluth through Minneapolis, Sioux City and Emerson to Omaha. The same road extends from Emerson to Norfolk. The distances are as follows:

From	To	Miles.
Duluth	Minneapolis	390
Minneapolis	Sioux City	29
Sioux City	Emerson	15
Emerson	Omaha	47
Emerson	Norfolk	47

Making the total distance from Duluth to Omaha 590 miles. The local rate at the present time from Duluth to Omaha is 80 cents, from Duluth to Emerson 50 cents, and from Duluth to Norfolk 81 1/2.

Mr. ~~Wheeler~~ ^{Wheeler} is of the opinion that the Norfolk rate should be made by adding to the Emerson rate the full local distance tariff from Emerson to Norfolk, which is as follows:

1	2	3	4	5	A	B	C	D	E
42	29	25	21	16	16	11	9	7	4 1/2

In this I cannot concur. The Duluth-Omaha rate is competitive, and it would be manifestly unjust if that rate were taken as the absolute standard of the rate from Emerson to Norfolk. But neither can we treat the Duluth-Omaha rate as separate and distinct from the Duluth-Norfolk rate. The fact that this line of competition reaches Emerson must be taken into account. Norfolk is entitled to receive whatever benefit its proximity to Emerson reasonably secures to it. The Chicago, St. Paul, Minneapolis & Omaha Company brings this traffic from Duluth to Emerson at 80 cents, first class. The same line extends from Emerson to Norfolk, and it must, in my opinion, carry Norfolk traffic to its destination for what under the circumstances is a reasonable charge from Emerson to Norfolk. Assuming that the local distance tariff above given is entirely reasonable, when the traffic is taken up at Emerson and laid down at Norfolk, I do not think it is reasonable, when the service performed is the carriage of this traffic which is already upon the cars of the defendant an additional 17 miles. If this railroad makes some profit in carrying 100 pounds of first class merchandise from Duluth to Omaha, a distance of 590 miles for 80 cents, there is certainly

a strong presumption that 32 cents is an unreasonable charge for carrying 100 pounds the additional distance of 47 miles, from Emerson, to which the rate from Duluth is the same as to Omaha.

Such has been the holding of this Commission in many cases where a similar situation was presented. *Manufacturers' & Jobbers' Union v. Minneapolis & St. L. R. Co.* 4 I. C. C. Rep. 79, 3 Inters. Com. Rep. 115; *Troy Bd. of Trade v. Alabama Midland R. Co.* 6 I. C. C. Rep. 1, 21, 4 Inters. Com. Rep. 348, 356; *Hampton Bd. of Trade v. Nashville, C. & St. L. R. Co.* 8 I. C. C. Rep. 503; *Danville v. Southern R. Co.* 8 I. C. C. Rep. 409; *Gustin v. Atchison, T. & S. F. R. Co.* 8 I. C. C. Rep. 277. In all the foregoing cases the underlying question was the same as here, and in every instance it was held that the addition of the full local was improper. I am not aware that this Commission has ever decided the contrary. In the *San Bernardino Case*, 9 I. C. C. Rep. 42, we refused to disturb a tariff where the rate to an interior point was constructed by adding the full local to the terminal rate, but this was expressly put upon the ground that the competition involved was by water, over which the carriers could have no control and in case of which the transportation from the terminal point to the interior point, if actually rendered, would be a strictly local service involving full terminal expenses at both ends of the haul. Even then we declined to affirm the propriety of the tariff.

There are without doubt many cases where the through rate is with propriety made by adding the locals. There may conceivably be instances in which no other method of constructing the through rate would be just. There are many instances, of which the Missouri River basing line may perhaps be one, in which such a method of ratemaking was improper at its inception, but where traffic and business conditions have become so established that it would be unwise to attempt any disturbance now. None of these considerations obtain here. This is a much stronger case than that of Mankato, above referred to, 4 I. C. C. Rep. 79, 3 Inters. Com. Rep. 115, for here the same railroad transports the freight from Emerson to Norfolk, where—
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as in that case a new line carried the traffic from Waterville to Mankato.

Moreover, in the very recent case, *Wilmington Tariff Association v. Cincinnati, Portsmouth, & Virginia R. R. Co. et al.* 9 I. C. C. Rep. 118, we held that where lines leading from Cincinnati to Wilmington, N. C., and Norfolk, Va., respectively, observed a certain relation in rates between Norfolk and Wilmington, that should be taken as the measure of the difference which should be properly observed when traffic came from points west of Cincinnati, like Chicago and St. Louis. In the case before us, the rate from Minneapolis is the same to Emerson as to Norfolk, and an application of the principle laid down in the Wilmington case would require that rates from Duluth should also be the same. While I do not think that the reasoning in the Wilmington case could be applied in all cases, I do think that it would be difficult to distinguish this case from that, and that the relation of rates from Minneapolis ought to be some guide to a proper relation from Duluth, unless some facts are shown which rebut this presumption.

I also think, although this proposition is more doubtful, that the Chicago rate to Norfolk should be the same as the Duluth rate. To all Missouri River points in this vicinity rates from Chicago and Duluth are identical. To most points south and north of Norfolk they are the same, and we are told that "competition" compels this. In my opinion, this same competition which operates at other points should be given effect at Norfolk. Lines of railroad extend from Sioux City to Chicago, and rates by those lines are the same from Chicago to Sioux City as from Duluth to Sioux City. While the Northwestern System may not be under obligation to join in tariffs from Chicago to Norfolk by that route; while it may perhaps with propriety insist upon carrying this traffic over its own iron, it should in making these rates acknowledge the existence of such possible routes.

The practical question remains as to how much the distance locals above given should be reduced in making the rate from Emerson to Norfolk, and this is a question which cannot be exactly answered. In my judgment, under all the circumstances, not over three-fourths of the full local should be added, and I should say even less were it not that the rate thus deter-

mined was to apply from Chicago as well. This would establish substantially the following rates from Duluth and Chicago to Norfolk:

1	2	3	4	5	A	B	C	D	E
1.04	87	64	48	41	44	37	29	23½	19½

Such a reduction in rates to Norfolk would not cost the defendants any extravagant amount. It would require that no rate east of Norfolk should be higher than those above stated, and would also necessitate a readjustment of rates for a certain distance west of Norfolk. It would still leave a rate of \$1.04 first class from Chicago to Norfolk, and other rates in proportion. In my judgment, those rates would be sufficiently high. The distance from Chicago is 585 miles. For nearly 500 miles of that distance the road is double-tracked, the volume of traffic large and the cost of operation small. It cannot be said by any standard, absolute or relative, that a first class rate of \$1.04 for that distance under those conditions is too low. The Elkhorn road must not be treated in this proceeding as separate and distinct from the Northwestern System. The parent company of that system absolutely owns the entire stock of the Elkhorn Company, and therefore the road itself. The rate from Chicago to Norfolk is published by this system as a through rate between those points, and it must be so considered in passing upon its justice.

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SHIPPERS' UNION OF PHOENIX

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; THE MARICOPA & PHOENIX & SALT RIVER VALLEY RAILROAD COMPANY; THE SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY; THE SANTA FE PACIFIC RAILROAD COMPANY; THE SOUTHERN CALIFORNIA RAILWAY COMPANY; and THE SAN FRANCISCO & SAN JOAQUIN VALLEY RAILWAY COMPANY.

Decided June 4, 1902.

The Santa Fé and Southern Pacific Systems reach Los Angeles, Cal., a point to which rates from the east are affected by water competition. Phoenix, Ariz., is not upon either of these through lines, but is connected therewith by two lateral lines, one on the north connecting with the Santa Fé at Ash Fork and one on the south connecting with the Southern Pacific at Maricopa. On complaint that freight rates between New York, Chicago, St. Louis and other eastern points and Phoenix are unjust and unreasonable in themselves and relatively as compared with rates on like traffic between New York and such other eastern points and Los Angeles, *Held:—*

1. That when water competition permits the establishment of classifications and rates below the rates to non-competitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter distance points not affected by such competition, and there is no evidence in this case upon the reasonableness of the rates to and from Phoenix except comparison with Pacific Coast rates.
2. That the evidence in this case is insufficient to constitute the basis of a decision requiring defendant carriers to modify their long-standing system of rate-making, which also applies over other transcontinental lines throughout a great belt of territory and affects numerous localities and interests which have not been heard in this proceeding, and this being so the relief sought by complainant is for the present denied, but the case is retained for further consideration pending the investigation and disposition of other cases involving the same general question.

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Baker & Bennett for complainant.

W. F. Herrin and *Frank Cox* for Southern Pacific Company.

E. D. Kenna and *Robert Dunlap* for Atchison, Topeka & Santa Fé Ry. Co; Santa Fé Pacific R. R. Co.; Southern California Ry. Co.; San Francisco & San Joaquin Valley Ry. Co.

G. W. Kretzinger and *W. C. Campbell* for Santa Fé, Prescott & Phoenix Railway Company, and Atchison, Topeka & Santa Fé Railway Company.

Kibbey & Edwards for Maricopa & Phoenix & Salt River Valley Railroad Company.

FIFER, Commissioner:

The complaint in this case was filed May 18, 1899, by the Chamber of Commerce of Phoenix, Arizona, and sets forth that the complaining body is a society of merchants, dealers and shippers of Phoenix; that the defendants are interstate carriers between the points whose rates are the basis of complaint; that Phoenix in the southern part of Arizona has a population of 15,000, lying 196 miles southerly from Ash Fork on the Santa Fé and 34 miles northerly from Maricopa on the Southern Pacific; class rates are shown from New York and Chicago to Phoenix and Maricopa, as against class rates over same lines to Pacific coast terminals showing discriminations as high as 95 cents per 100 pounds against Phoenix; that New York, Chicago and St. Louis commodity rates to Phoenix and to coast terminals show differences as high as \$1.95 per 100 pounds against Phoenix; gives a table of distances by different routes between Chicago, Los Angeles and San Francisco and Phoenix and Maricopa; that the commerce from the East to coast points is carried principally by the Atchison and Southern Pacific and principally at class rates greatly lower than like rates to Phoenix, so that it is impossible for Phoenix to compete except on most disadvantageous terms even in Phoenix itself; that these rates to Phoenix are unreasonable and unjust in themselves, and relatively, as compared with coast terminal rates and classifications, resulting in unjust discrimination and undue and unreasonable prejudice and disadvantage to Phoenix and merchants,

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shippers and dealers therein: that these discriminating rates and classifications over the defendant, the Atchison, constitute a violation of the fourth section of the Act: that rates to eastern points from Phoenix and coast terminals show discriminations as high as 50 cents per hundred pounds: that rates on certain commodities to eastern points from Phoenix and coast terminals show still higher discriminations: that classification and rates from Phoenix to New York and Chicago are unreasonable and unjust in themselves, and relatively, as compared with rates and classifications of like traffic from Maricopa and coast terminal points: that the classification and rates over the Atchison from Phoenix and Maricopa to eastern points constitute a violation of the fourth section. The complaint concludes with a general prayer for relief.

The Santa Fe, Prescott & Phoenix Railway Company answering, denies the right of the Chamber of Commerce of Phoenix to institute a complaint looking to relief of the shippers and dealers of Phoenix, which suit it is averred may only be brought under the Act by the parties aggrieved: avers that its line from Phoenix to Ash Fork is wholly within the territory of Arizona, that it fixes its own rates over its own line, having no control or participation in the fixing of rates beyond its own line, that its rates are reasonable and without discrimination: that it makes no through rates: that through rates from New York to coast terminals are controlled by water rates: denies that Phoenix is an intermediate point on any line of road: denies that any traffic from New York or Chicago for Los Angeles or other west terminals passes over its line, or that any of its rates apply thereon.

The answer of the Southern Pacific Company denies substantially everything set forth in the complaint: admits classification of rates and distances as given in the complaint was a violation of the Act, but denies unreasonableness of rates or the violation of the provisions of sections 1, 2 or 3 of the Act, and the Act of 1906 under similar circumstances and conditions, and prays to be dismissed.

The answers of the other defendant railroads admit the general facts set forth in the complaint, except certain statements of dates as to rates, classifications and distances.

U. S. C. R. R.

and make general and specific denial of unreasonable or discriminating rates, or unjust classifications, or any violations of the Act to regulate commerce.

FACTS.

We find the facts in this case material to the issue to be:

That the complaint was filed by the Chamber of Commerce of Phoenix, an organization of citizens of that place, to further its interests as well in securing favorable transportation rates as in other matters. In November of 1899 the merchants and other citizens organized the Shippers' Union of Phoenix to be substituted as complainant in this case, and to prosecute this complaint before the Commission, the Chamber of Commerce meanwhile dissolving. Upon the application of the Shippers' Union of Phoenix requesting to be substituted for the Chamber of Commerce as complainant, the Commission, on November 27, 1899, entered an order making such substitution.

Phoenix is situated in Maricopa County, Arizona, and is a city of about 15,000 inhabitants, lying between the two southern transcontinental lines, the Atchison and the Southern Pacific.

The Maricopa & Phoenix & Salt River Valley Railroad runs from Maricopa, a station on the Southern Pacific Railway 34.36 miles to Phoenix; it consolidated with the Phoenix, Tempe & Mesa Railway December 9, 1890, which branch line runs eastwardly to Mesa 7.56 miles.

The Santa Fé, Prescott & Phoenix Railway was opened throughout about March 13, 1895, and runs northward to Ash Fork on the Atchison, a distance of 196.6 miles, passing through the northern part of Maricopa County, which has about 21,000 population, and through the most populous section of Yavapai County, which has nearly 14,000 population. This line is exempt from taxation to 1914.

The distances from Ash Fork on this line to the various stations mentioned in the complaint are as follows; to Jerome Junction 41.6 miles, Prescott 59.8 miles, Kirkland 89.5, Congress Junction 126.1, Wickenburg 142.5, Hot Springs Junction 153.3, Glendale 186.8, Alhambra 191.2, Phoenix 196.6.

The population is principally mining,—gold, silver and copper I. C. C. REP.

per being found in abundance—and agricultural, the valleys yielding good harvests, beyond the local consumption, the surplus hay and grain being shipped as far as Los Angeles and to many points in the Territory.

The Atchison, Topeka & Santa Fé Railway with a main line Chicago to San Francisco, 2,577 miles, to Los Angeles, 2,265, and to Ash Fork 1,779 miles, becomes part of a through line from New York and intermediate points to Pacific coast terminals. It is 2,539 miles from Chicago by the Illinois Central and Southern Pacific, and 1,974 miles by the Atchison, Topeka & Santa Fé route to Phoenix, and from Phoenix 919 miles to San Francisco by the short route, and 448 miles to Los Angeles.

The Southern Pacific Company from New Orleans to Maricopa, 1,593 miles, to Los Angeles 2,007 miles, to San Francisco 2,189 miles, is also, with connections, a through line to the coast points, with a connection by steamship line from New York to Galveston, from which point to San Francisco is 2,184 miles. By either route Phoenix is not an intermediate point, but the terminus of the branch line from the Atchison at Ash Fork by the Santa Fé, Prescott & Phoenix Railway, and by the Southern Pacific route the terminus of the Maricopa & Phoenix & Salt River Valley Railroad.

Under the classification and rates in force from eastern points to Pacific coast terminals, some freights from distributing points between New York and the Missouri River are carried at comparatively low rates to California common points, as Los Angeles, San Francisco, etc., to compete with ocean freights from New York, an influence which it is claimed extends as far west as Chicago and St. Louis, from which points shipments by ocean have been actually made.

The rates complained of from points between the Missouri River and New York to Phoenix are mostly made by adding the through rate to Los Angeles to the local rate back to Phoenix.

But the rates complained of are comparative, and the discriminations which it is alleged are injurious to Phoenix and its jobbers are such as permit the Los Angeles merchants to secure a through haul at so low a rate as to ship back at a local less than carload rate, and reach Phoenix at the same rate with

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goods which, though of the same origin, had been hauled nearly 900 miles less.

Los Angeles has a something less local rate to nearer towns, and when Phoenix ships to these towns under a local tariff it finds Los Angeles goods selling at too great advantage to allow competition. The complainants submitted a table giving rates on various articles to Los Angeles with the local back to these towns, and the through rate to Phoenix with its locals back to the same points showing that at these markets Los Angeles has advantages in rates alone on the articles named of differences in cents per 100 pounds varying from 1 cent to \$1.07.

Freight Rates in favor of Los Angeles and against Phoenix per 100 pounds.

	Calico.	Furniture.	Whiskey.	Canned Goods.	Package Coffee.	Books.	Fence Wire.	Boots and Shoes.	Rope.
Hot Springs	31	1	66	3	3	31	3	21	34
Wickenburg	39	9	74	11	11	39	11	29	42
Congress	53	23	86	19	19	53	19	43	54
Kirkland	74	44	107	39	39	74	39	64	75
Maricopa	44	14	73	10	10	38	10	34	36

There are in Phoenix ten or twelve wholesale houses which do a jobbing business in Phoenix and the surrounding territory. An important part of the shipments to Phoenix is in carload lots, one witness declaring that not above 25 per cent of their shipments was in less than carloads, and another that nearly one half of the carload shipments in was to more than one consignee.

Potatoes, beans, salt, sugar, canned goods, carriages, and many other classes of goods come usually in carload lots. Canned goods, a large part of the business of some stores, come from Chicago, Iowa, etc., and include vegetables, meats, etc. The following tables exhibit the actual and comparative rates between eastern markets and Phoenix and coast terminal points.

Statement showing class rates from New York, N. Y. via the 9 I. C. C. REP.

Southern Pacific and the A., T. & S. F., rail and water, to the following points:

From New York to	Rates in Cents per 100 Pounds.									
	1	2	3	4	5	A	B	C	D	E
San Francisco, Cal.	300	260	220	190	165	160	125	100	100	95
Los Angeles, Cal...	300	260	220	190	165	160	125	100	100	95
Maricopa, Ariz.....	375	327	288	230	200	200	180	145	130	120
Phoenix, Ariz.....	395	347	308	250	218	218	198	163	148	138
Hot Springs, Ariz..	395	347	308	250	218	218	198	163	148	138
Wickenburg, Ariz...	395	347	308	250	218	218	198	163	148	138
Congress, Ariz.....	395	347	308	250	218	218	198	163	148	138
Kirkland, Ariz.....	395	347	308	250	218	218	198	163	148	138
Prescott, Ariz.....	395	347	308	250	218	218	198	163	148	138
Ash Fork, Ariz.....	465	405	320	245	215	(Official.)				
Flagstaff, Ariz.....	465	405	320	245	215	"				

Statement showing class rates from Chicago, Ill., to San Francisco and Los Angeles, Cal., and the following points in Arizona:

From Chicago, Ill., to	Rates in Cents per 100 Pounds.									
	1	2	3	4	5	A	B	C	D	E
San Francisco, Cal.	300	260	220	190	165	160	125	100	100	95
Los Angeles, Cal...	300	260	220	190	165	160	125	100	100	95
Maricopa, Ariz.....	352	305	270	210	185	190	170	135	120	106
Phoenix, Ariz.....	372	325	290	230	203	208	188	153	138	124
Hot Springs, Ariz..	372	325	290	230	203	208	188	153	138	124
Wickenburg, Ariz..	372	325	290	230	203	208	188	153	138	124
Congress, Ariz.....	372	325	290	230	203	208	188	153	138	124
Kirkland, Ariz.....	372	325	290	230	203	208	188	153	138	124
Prescott, Ariz.....	372	325	290	230	203	208	188	153	138	124
Ash Fork, Ariz.....	390	340	270	210	185	190	170	135	120	110
Flagstaff, Ariz.....	390	340	270	210	185	190	170	135	120	110

Statement showing class rates from St. Louis, Mo., to San Francisco and Los Angeles, Cal., and the following points in Arizona:

From St. Louis, Mo., to	Rates in Cents per 100 Pounds.									
	1	2	3	4	5	A	B	C	D	E
San Francisco Cal..	300	260	220	190	165	160	125	100	100	90
Los Angeles, Cal...	300	260	220	190	165	160	125	100	100	90
Maricopa, Ariz.....	332	289	260	205	180	182	163	130	115	101
Phoenix, Ariz.....	352	309	280	225	198	200	181	148	133	119
Hot Springs, Ariz..	352	309	280	225	198	200	181	148	133	119
Wickenburg, Ariz..	352	309	280	225	198	200	181	148	133	119
Congress, Ariz.....	352	309	280	225	198	200	181	148	133	119
Kirkland, Ariz.....	352	309	280	225	198	200	181	148	133	119
Prescott, Ariz.....	352	309	280	225	198	200	181	148	133	119
Ash Fork, Ariz....	370	320	260	205	180	182	163	130	115	105
Flagstaff, Ariz.....	370	320	260	205	180	182	163	130	115	105

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Rates on commodities in carloads from Phoenix and Los Angeles to New York and Missouri River points; also from Phoenix to Los Angeles:

From	Rates in Cents per 100 Pounds. To New York.					
	Wool in bales.	Hides, dry.	Hides, green.	Honey, strained, in bbls.	Honey, strained, in tin cans.	Honey in comb.
Phoenix, Arizona	*238	220	218	145	110	245
Los Angeles, Cal.	100	†100	100	210	85	210
To Miss. River Points.						
Phoenix, Arizona	238	220	218	145	110	220
Los Angeles, Cal.	100	†100	100	185	85	185
120						
To Los Angeles, Cal.						
Phoenix, Arizona	158	168	118	146	110	146

Statement showing changes in rates on canned goods from New York to Phoenix, from October, 1895, to present date.

From	Combination on Los Angeles. Rates in cents per 100 pounds. Canned Goods. New York, N. Y.					
	To Chicago.	Beyond Chicago.	To Los Angeles.	Los Angeles to Phoenix	Los Angeles to Phoenix	Total Rate New York to Phoenix.
	C. L.	C. L.	C. L.	C. L.	L. C. L.	C. L.
Oct. 25, 1895, Based on Chicago..	29	65	94	89	152	183
June 10, 1896, Based on Chicago..	29	65	94	93	146	187
Dec. 15, 1897	Through		85	93	146	178
Nov. 30, 1897	"		†75	93	146	168
May 9, 1898	"		85	93	146	178
May 9, 1898	"		†75	93	146	168
June 25, 1898	"		100	93	146	193
June 25, 1898	"		†95	93	146	188

*Sea & rail 2 cents per 100 pounds less.

†Via Oregon Ry. & Navigation Co., Via Huntington, Ore.

‡Mallory Line via Galveston.

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Statement showing rates on canned goods from New York to the following New Mexico and Arizona points, based on Los Angeles, California, Phoenix and Maricopa, Arizona :

From	Rates in cents per 100 pounds. New York, N. Y.									
	Los Angeles.		Phoenix.		Phoenix.		Local.		Total Rates.	
To	C. L.	Local.	C. L.	Total.	C. L.	L. C. L.	C. L.	Local.	C. L.	Total Rates.
Phoenix	100	93	193	218	250	...	...	218	250	
Alhambra	100	93	193	218	250	4	4	222	254	
Glendale	100	93	193	218	250	7	8	225	258	
Hot Springs . . .	100	93	193	218	250	28	31	246	281	
Congress Junc.	100	93	193	218	250	46	47	264	297	
Wickenburg . . .	100	93	193	218	250	35	39	253	289	
Kirkland	100	93	193	218	250	60	67	278	317	
Prescott	100	93	193	218	250	71	81	289	331	
Ash Fork	No Published Rates.									
Flagstaff	" " "									
Tempe	*200	18	218	218	250	6	6	225	256	
Mesa City	*200	24	224	218	250	8	10	226	260	
Maricopa	100	100	†200	218	250	24	26	242	276	

Statement showing rates on canned goods in carloads from St. Louis, Mo., and Chicago, Ill., to Elko, Nevada, and Wallace, Idaho; also the distances :

From	Rates in cents per 100 pounds.			
	Chicago.		St. Louis.	
To	Distance.		Distance.	
	miles.		miles.	
†Elko, Nevada	1797		1719	
Wallace, Idaho	1796		1802	

Rates are based among other conditions on the density of population and volume of traffic. Arizona is one of the most sparsely settled of our divisions, averaging in 1890 but 1/2 person to the square mile. The population has about doubled in the last ten years, but even this leaves it but one individual to the mile, and the consequent light traffic must bear burdens heavier than is necessary where an immense trade may divide the tax of transportation.

In addition to this the physical conditions of the territory

*Based on Maricopa.
†Through 5th Class rate from New York also.
‡Rates to Elko, combination on Sacramento, Cal.

small heavy expense in operation. Transportation by any method in the interior without water routes must rely on railroads. Life is much higher than in almost any other part of the country, supplies must be carried long distances, lumber does not sell at less than in more favored localities, and rails must be brought across the continent. Wages are higher than the average of trans-continental lines. The arid regions across which the route ran further into water, and the imports necessitating expensive drilling and pumping of water from great depths and then so impregnated with mineral matter as to require boilers and engines and shortening sometimes to more than half the life of parts of the engines. The mountainous country through which the southern route passes has many and heavy grades and taken together all these conditions justify coal rates as high as anywhere else in the country.

With the trade to the Pacific coast terminals there may be some comparison, the conditions however are entirely dissimilar. Up to a comparatively short time ago all traffic with the Pacific coast was carried by water, but with the advent of railroads competition by coast lines constantly increased and today it seems the traffic which would otherwise go by sea come through water in cases where it is not, it is claimed to effect a reasonable profit on investment. The railroads carry passengers by everything perishable and all articles which light insurance rates render too expensive for sea carriage, and even of that for which the ships may compete, the railroads with the advantages of safety and quick delivery, have secured the greater part of the traffic though a considerable volume still goes by water.

Nearly all the traffic which moves between the two oceans might be carried by water to San Francisco and thence to Los Angeles at small cost, but this difference in cost to Los Angeles is not taken into account and it is considered a coast terminal point in connection with San Francisco.

While perhaps little if any of the commodities whose rates are the subject of complaint are now being moved by sea, yet it is contended the rates to the western coast are affected by the coast competition even as far west as the Missouri River.

This competition by way of Cape Horn is the more impor-

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tant, and while since 1898 ships have been something more scarce by reason of the demand of our own country for transports during the Spanish war and the Chinese and Philippine troubles, and of Great Britain for the South African war, yet the competition threatens to become more active in the building of larger and swifter vessels for all service, and the possible removal of the monopoly of carriage by the Panama route, while the opening of an Isthmian canal would almost certainly force rates still further downward.

In moving competitive freights from the east to western coast points, it is claimed, nothing is considered save securing the freight at something over the actual cost of transportation. Interest and fixed charges are ignored, though they constitute a large percentage of the expenses as now made up; a slight advance over the actual cost of moving the traffic is considered that much toward a profit which forfeiting the freight would lose. The roads contend that by securing this traffic more is made than if it was declined, and consequently that they are enabled to make all rates on the line of their road, including locals, lower than could otherwise be done. That every point on the line gets the advantage of the too low through rates, and that any change in their system would mean loss to themselves and disadvantage to interior points. If the through rates were made on a mileage basis, or to conform with their locals, they could not carry a pound of the competitive traffic and would lose whatever of revenue they now secure from its carriage, and if they brought their local rates down to the same basis with their through rates, it would simply mean the bankruptcy of the company operating the road.

Though desirable that each ton of freight should bear its proportional share of cost and profit in carriage, it has in practice been found impossible to conduct transportation by any hard and fast rules; raw materials and low grade bulky freights could not be transported at all under such conditions, and therefore classifications have been made, and when even those fail to move freight in sight commodity rates are put in giving exceptionally lower rates.

CONCLUSIONS.

The facts revealed by the investigation of this complaint are
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hardly to be considered matters of dispute, as there is a substantial agreement in the statements set forth in the complaint, averred in the answer, elaborated in the testimony and depositions of witnesses, as well as in the records of this office.

That the rates from eastern points over the entire territory from the Missouri River to New York are higher to Phoenix, Arizona, than to Los Angeles, California, as well as the other Pacific coast terminals, is conceded.

That special or commodity rates giving even greater advantage to Los Angeles on some staples, while such commodity rates are denied to Phoenix whose traffic continues to be carried under the higher class rates, is also admitted.

While it is true that water competition in some instances creates a condition of dissimilar circumstances that leaves the resulting tariffs no absolute measure of a reasonable compensation for transportation, and unsatisfactory as a standard of comparison for other points where such competition does not exist, it is difficult for those who reside at shorter distance points to avoid a protest against the payment of rates which are higher than those exacted for hauls of much greater distance.

But when water competition permits the establishment of classifications and tariffs below the rates fixed to non-competitive points, such rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to intermediate points. As to the reasonableness of the latter rates there was no evidence introduced in this case except a comparison with coast rates.

The system of rate-making common to nearly, if not all, the transcontinental railroads operating in the sparsely settled western country between the prairies and the sea, is of so long standing, having prevailed since the beginning of rail transportation to the present time, and is a policy so fixed, so nearly universal, as to require in its modification the amendment of practically all tariffs in that great belt, the upsetting of the system of rates on every line and at every station—a proceeding so revolutionary as would introduce infinite confusion, and perhaps loss, if hastily accomplished—and involves so many roads not represented in this proceeding, so many localities and interests whose claims are entitled to consideration, and as yet unheard, that it

s impossible in this connection to finally dispose of the conflicting interests without more extended investigation and consideration; and therefore the relief prayed for by complainant is for the present denied.

The same principle is involved in other cases now pending before the Commission wherein the complaining localities are situated on main lines instead of the terminus of a branch off the through route with its more expensive local haul. We feel that if the situation in that locality is to be disturbed, the Commission can, in the cases now pending, do so more intelligently than it is possible to do in this case, and if in the investigation and consideration of these cases, or of a general inquiry into the system upon which such intermediate rates are established it be found that the system is illegal or the discriminations thereby resulting are so excessive and burdensome as to be unreasonable and unjust, or that the rates are unreasonable in themselves, an order will be entered in this case requiring a modification of the tariffs complained of to comply with such conclusion.

CLEMENTS, *Commissioner*, concurring:

As the questions of law and fact involved in this case are left open for further inquiry and future determination, I assent to the submission of the foregoing report.

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THE NATIONAL HAY ASSOCIATION

v.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE ERIE RAILROAD COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE PENNSYLVANIA COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE DELAWARE & HUDSON COMPANY; THE PHILADELPHIA & READING RAILWAY COMPANY; THE PERE MARQUETTE RAILROAD COMPANY; THE GRAND RAPIDS & INDIANA RAILWAY COMPANY; THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE ANN ARBOR RAILROAD COMPANY; THE TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY; THE CANADIAN PACIFIC RAILWAY COMPANY; THE CANADA ATLANTIC RAILWAY COMPANY; THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; THE CENTRAL VERMONT RAILWAY COMPANY; THE BOSTON & MAINE RAILROAD COMPANY; and THE BOSTON & ALBANY RAILROAD COMPANY.

Decided October 16, 1902.

1. Carriers are entitled under the Act to regulate commerce to determine for themselves what are proper rates in the first instance, but when they, as in this case, make numerous rate advances by concerted action and under circumstances not showing justification for increased revenue, they cannot successfully plead the excuse of financial necessity where the legality of such action as applied to any given commodity is challenged; and the controlling question must be as to the

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reasonableness and justice of the advance in classification and rate upon the facts shown in each case.

2. The legal duty of common carriers to so classify traffic and fix charges thereon that the burdens of transportation shall be reasonably and justly distributed among the articles they carry arises under the obligation imposed upon them not to charge unreasonable or unjust rates or to inflict any unjust discrimination or undue prejudice in any respect whatsoever; and even in cases where the need of additional revenue is apparent the carrier cannot arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation.
3. The defendant carriers by keeping hay and straw in the sixth class and charging sixth class rates thereon for thirteen years or more, with the exception of a short period in 1894, were furnishing evidence that such classification and rates are reasonably high, and while the continuance of such classification and rates is not conclusive evidence of their reasonableness, it is in the nature of an admission against them which tends to show the unreasonableness of the advance of hay and straw to fifth class rates in January, 1900, and the force of this admission becomes great in view of the largely increased business and profits of the defendants in 1899 and subsequent years.
4. In the carriage of great staples, which supply enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carriers are both necessary and justifiable; and although the defendant carriers may be at some greater expense to handle and transport hay than some other articles in the fifth or sixth class of their freight classification, the character, value, volume and use of that commodity are such as to require relatively low charges for its carriage.
5. In a freight classification like the Official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in character, use, value, volume, bulk, weight, risk, expense of handling and competition; the best that can be done under such a scheme of classification is to place two or more articles possessing general similarity in the same class, and where an article is not analogous to any other to put that article in the class containing commodities which are most nearly related to it in general character and other essential respects.
6. On January 1, 1900, defendants and other carriers using the Official Classification advanced hay and straw in carloads from sixth to fifth class rates, and have since enforced such advanced charges. It is conceded that hay and straw should take the same rates. Hay in respect of character, use, value and volume corresponds more nearly with articles taking sixth class or lower commodity rates than with those in the fifth class. Apparently all commodities which come to defendants in aggregate volume or tonnage equal to or exceeding that of hay are given commodity rates. Hay as compared with grain and some

other articles when carried between the same points gives the carriers less revenue per car, but it does not follow therefrom, taking the whole traffic, local as well as through, that hay may not give the carriers an average revenue per car per mile nearly as great or even greater than that derived from grain or such other articles. Though hay may be less desirable than grain as an article of traffic it is much more profitable to the carriers, considering its greater volume and the certainty of large quantities seeking transportation each year, than many, if not all, other commodities actually taking fifth or even sixth class rates. Hay is a raw agricultural product which is grown, shipped and consumed in all parts of Official Classification Territory and, coming to the carriers in steady and large volume, is profitable to them at sixth class rates. The cost to the shipper of transporting hay from the Middle West to eastern markets constitutes a large part of its value in such markets, and when added to the cost of baling and sale the total approximates or exceeds the price realized by the producer. The increased rates have added to the cost of hay and straw to consumers or diminished the price to producers, or both, and prejudiced in some degree the business of middlemen. The advance in hay rates changed a long-existing rate adjustment as between American and Canadian hay shipped to New England and parts of New York in favor of a producing section in a foreign country from which hay shipments into the United States are required by law to pay a duty as high as \$4.00 per ton. *Held*, Upon all the facts and circumstances, that the action of defendants on January 1, 1900, whereby hay and straw were advanced from sixth to fifth class and thereafter charged fifth class rates for transportation was unreasonable and unjust and resulted in unlawful discrimination and prejudice against hay and straw, localities in Official Classification Territory wherein those commodities are produced, and against producers, shippers, dealers and consumers of such articles in that section of the country.

John B. Daish, C. C. Cole, E. Richard Shipp and H. E. Page for complainant.

Adelbert Moot and George W. Wall for defendants generally.

W. J. Calhoun for New York, Chicago & St. Louis R. R. Co.

Edgar J. Rich for Boston & Maine R. R. Co.

W. A. Day for Grand Trunk Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case involves the legality of the change made by defendants on January 1, 1900, in the classification of hay and straw in carloads from sixth to fifth class and the increased cost of transportation resulting from application of the higher fifth

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class rates. Such advanced classification and rates are alleged by the complaint to have been and to be unjust and unreasonable, to subject all producers, merchants, shippers and consumers of hay, including the members of the complaining association, the traffic in hay and straw and numerous localities in hay producing sections of the country to unjust discrimination and undue and unreasonable prejudice and disadvantage, and to give undue and unreasonable preference and advantage to the production, sale and shipment of grain and grain products, all kinds of stock feed and other articles capable of being used in the place of hay or straw, persons engaged in their production, sale or shipment, and localities in sections of the country where in they are produced or manufactured. The complaint also alleges that the defendants by making and maintaining such advance in classification and rates on hay and straw have unjustly discriminated against producers, merchants, shippers and consumers of those commodities, the traffic therein, and numerous localities and producing sections of the country, and have wrongfully put them to prejudice and disadvantage in favor of and to the unlawful preference and advantage of all other traffic, particularly such traffic as the defendants have given the same rates as or lower rates than they accord to hay and straw.

A further allegation in the complaint is that Congress has seen fit to establish a customs duty of \$4.00 per ton on hay shipped to the United States from foreign countries, but that the rates fixed by the defendants, the Boston & Maine Railroad Company, the Central Vermont Railway Company, the Boston & Albany Railroad Company, the New York, New Haven & Hartford Railroad Company, the New York Central & Hudson River Railroad Company, the Delaware & Hudson Company, the Canadian Pacific Railway Company, the Canada Atlantic Railway Company and the Grand Trunk Railway Company of Canada, for transporting hay from the Provinces of Quebec and Ontario in the Dominion of Canada to points in the New England States north of the Connecticut State line, east of the Connecticut River, New York City, places on Long Island, and all intermediate stations, together with the aforesaid advances in the rates on hay and grain in the United States, have largely operated to render nugatory the protection to American hay that said customs duty was intended to give, com-
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pensating shippers of Canadian hay to the extent of three-fourths of said duty; that such rates enable Canadian hay to compete successfully with American hay in the consuming localities of New England, New York City and Long Island, the distance in each instance to such points being less from places in the aforesaid Provinces of Canada than from places in the Middle West of the United States; that by reason thereof disastrous consequences have resulted to the hay industry in the United States and those interested therein, including carriers; and that the evils thus caused would be remedied if hay and straw were restored to the sixth class of said Official Classification.

The defendants deny generally the violations of law alleged in the complaint.

The facts deemed material to the disposition of this case are found as follows:

FINDINGS OF FACT.

1. The complainant is an incorporated association existing under the laws of the State of New York and having about 616 members residing in different parts of the United States, namely, in West Virginia, Wisconsin, Virginia, Texas, Tennessee, Rhode Island, Pennsylvania, Ohio, New Jersey, New York, Nebraska, Missouri, Michigan, Minnesota, Massachusetts, Maryland, Louisiana, Kentucky, Kansas, Iowa, Indiana, Illinois, Indian Territory, Georgia, Washington, Connecticut, Alabama and the District of Columbia. Its members generally deal in hay and straw as shippers, wholesalers, commission men or retailers. Some of them are producers of those commodities and some are interested also in grain and other farm products. The purposes of the Association, as shown by the articles of incorporation, include the promotion of trade and commerce in hay and straw and advancement of the interests of its members and those having common business relationship in such commerce or trade. Although the complainant is an association having membership in numerous States wherein none of the defendants own or operate lines of transportation, a very considerable proportion, if not the greater number, of its members reside and do business in States through which lines

of the defendants are operated; and, moreover, as stated in its complaint, this proceeding is instituted by the complaining association, not only on behalf of its members, but of all other dealers, shippers, producers and consumers interested in the interstate transportation of hay and straw by the defendants. Numerous shippers and producers of hay and straw at various points in the territory involved have also filed individual protests in this case against the present classification and rates on those commodities.

2. The defendants are common carriers of interstate traffic, including hay and straw, in the territory affected by this proceeding, which is, generally speaking, all that portion of the United States lying east of the Mississippi River and Chicago and north of the Ohio and Potomac Rivers. This territory is called "Official Classification Territory," and the classification of freight articles transported between points in such territory is governed by what is known as the "Official Classification," which has been adopted and is generally applied by the defendants and practically all other railroad carriers therein. This classification is prepared by the "Official Classification Committee," the membership of which is composed of representatives from railway systems in the territory described. As advertised in the Official Railway Guide, these systems are the Pennsylvania, New York Central & Hudson River, Erie, Delaware, Lackawanna & Western, Lehigh Valley, Baltimore & Ohio, Lake Shore & Michigan Southern, Grand Trunk, Cincinnati, Hamilton & Dayton, Wabash, Boston & Albany, Boston & Maine and Ohio Central. All except the last-named company are defendants in this case. On January 1, 1900, the classification of hay and straw in carload quantities, as specified in said Official Classification, was advanced from sixth class to fifth class, and thereby the rates on those articles were substantially increased. Through concerted action this and other advances in classification and rates were made effective on the same day and upon practically all lines in this territory. That change in classification and rates and the subsequent enforcement of the higher charges are the subjects of complaint in this controversy.

3. The first Official Classification was adopted and put in force by carriers throughout the territory to which it applies on April 1, 1887, four days prior to the time when the Act to
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regulate commerce took effect, and from that date up to January 1, 1900, hay and straw in carloads were classified in said classification as sixth class freight, minimum carload weight 20,000 pounds, with the exception of the period of four months from January 1 to May 1, 1894, when they were classed by defendants and other carriers using the Official Classification as fifth class, with a minimum carload weight of 18,000 pounds. Though in 1894 hay and straw were not restored in the classification to sixth class until May 1 of that year, nineteen of the thirty defendants filed with the Commission circulars restoring baled hay in carloads to sixth class on dates ranging from January 22 to February 21, 1894. Practically, therefore, the attempt to increase the rates in 1894 was abandoned within about a month and a half, instead of four months as shown by the classification. Since January 1, 1900, the classification of hay and straw in carloads has been fifth class, with a minimum carload weight of 20,000 pounds. Considerable fault was found by shippers with the higher fifth class rating in 1894 because it was put into effect during the shipping season, and they insisted that the advance, if made at all, should have been made about the first of September. As above shown, some of the railroad companies took independent action in restoring the sixth class rating, and while the subject of again applying fifth class rates to hay and straw was afterwards brought up for discussion between the railroad companies from time to time, they were unable to agree upon or at any rate did not take such action until six years later, on January 1, 1900.

The Official Classification contains six classes numbered consecutively from 1 to 6. It has also provided since March 10, 1900, for what are practically two additional classes applying to a considerable number of articles and which are referred to in the classification as "15 per cent less than second class" and "20 per cent less than third class." Under these various classes freight rates in effect between Chicago and New York are as follows:

Rates in Cents per 100 pounds.							
Classes.....	1	15% less than		20% less than		5	6
		2	3	3	4		
Rates.....	75	65	50	40	35	30	25

This general basis of rates, namely, 75 cents first class down
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to 25 cents sixth class, has been in effect practically without change between Chicago and New York for more than fifteen years. Such changes as have been made occurred through advances or reductions in the classification or by the application of commodity rates.

The difference of 5 cents in fifth and sixth class rates between Chicago and New York is equal to 20 per cent of the sixth class rate. That is understood to be about the average percentage difference in the rates applying to those classes on shipments between other points in Official Classification territory. The actual amount of the difference in cents is, of course, greater or less according as the distance the traffic is transported is greater or less. These rates between Chicago and New York constitute the basis according to which practically all rates from the Middle West to eastern destinations are determined. All that territory north of the Ohio River and east of the Mississippi River as far north as Dubuque, Ia., and east of Lake Michigan, to which should also be added the eastern part of the State of Wisconsin, is divided into percentage territories for the purpose of determining these rates. From these territories the eastbound rates are certain defined percentages of the Chicago eastbound rates, Chicago and points taking Chicago rates being called 100 per cent territory. These percentages range from 60 per cent in northwestern Pennsylvania and western New York to 120 per cent in part of Michigan, and as high as 125 per cent in a small section immediately east of the Mississippi River. The percentages involved in this case appear to range as high as 100 per cent in Michigan and western Indiana and 116 per cent in Illinois. As the increase in rates complained of amounts, under the rates from Chicago to New York, to exactly 5 cents per 100 pounds, or \$1.00 per ton, it follows that the increase per ton from any other territory is equal to the percentage by which rates from that territory are determined. For example, the increase from sixth to fifth class rates from Chicago to New York was \$1.00 per ton, from 96 per cent territory it was 96 cents per ton, from 110 per cent territory it was \$1.10 per ton, and from 80 per cent territory it was 80 cents per ton, on shipments destined to New York and points taking New York rates.

The rates from these shipping territories to Boston and points
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taking Boston rates constitute some exception to the rule above described. Such rates are made by adding to the rate to New York certain arbitraries amounting to about 10 per cent of the rate to New York. These arbitraries upon classes 1, 2, 3, 4, 5 and 6 are 7, 6, 5, 4, 3 and 2 cents, respectively. Therefore, while the fifth and sixth class rates from Chicago to New York are 30 and 25 cents per 100 pounds, respectively, the corresponding rates from Chicago to Boston are 33 and 27 cents. To further illustrate, the fifth and sixth class rates to New York from 80 per cent territory are 24 cents fifth class and 20 cents sixth class, and to Boston and Boston points they are the fifth and sixth class arbitraries higher, which make the rates 27 and 22 cents, respectively.

It is claimed by defendants that if these increased rates were figured on actual shipments from the producing territories to the various destinations, including all of the shorter distance consignments, the average increase would not exceed 40 cents per ton, but no figures have been submitted to support that contention. Even if that had been demonstrated to be a correct average, it would not diminish the burden placed upon the large quantity of hay carried over considerable distances from these percentage territories to such markets as New York, Boston and interior eastern localities.

4. As to such eastern markets it is shown that large quantities of hay have been shipped, particularly before January 1, 1900, from Michigan, Ohio, Indiana and eastern Illinois to Boston, Providence, Fall River, Taunton, Hartford, New York City, and numerous other points in New England and New York. After the change in rates complained of took effect the volume of these shipments was considerably diminished. One cause for this decrease in hay shipments to eastern points, particularly to New England and New York City destinations, is claimed by complainant to be the retention by certain of the defendants of commodity rates on hay produced in Canada while enforcing fifth class instead of sixth class rates on American hay from the Middle West. These commodity rates on the Canadian product having remained substantially the same after as they were before January 1, 1900, the increase on that date from sixth to fifth class rates on American hay did plainly give that much advantage to the foreign hay imported from Canada,

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and had the result also of diminishing the effect of the duty of \$4.00 per ton which was imposed on imported hay by the Dingley Act of 1897. The duty on such hay was increased under that Act from \$2.00 per ton, which had been fixed by the Act of 1893. Under the preceding McKinley tariff Act of October, 1890, the duty was \$4.00 per ton. Prior to 1890 the duty was \$2.00 per ton. Immediately after the passage of the Dingley Act importations from Canada began to fall off, and between that time (1897) and the year 1900 they were much less than they had been in previous years, but in 1900 and 1901 the tonnage of imported hay was largely increased. The imports of hay into the United States from 1890 to 1901, inclusive, the years ending with June 30, were in tons as follows:

1890 124,544	1891 58,242	1892 79,715	1893 104,257	1894 86,784	1895 201,900
1896 302,652	1897 119,942	1898 3,887	1899 19,872	1900 143,890	1901 142,627

AlI but a few tons of this imported hay came from Canada and was consumed very largely in New England and the State of New York. The defendants attribute the increase in importations in 1900 entirely to the short crop of that year. The figures for the succeeding year end, as stated above, with June 30, and the crop gathered in the calendar year 1901 had not then begun to move. Undoubtedly a small or large crop in the United States must operate to increase or diminish the demand in New England or New York for hay from Canada. On the other hand, with sixth class rates prevailing in the United States and a duty of \$4.00 per ton from October, 1890 to 1893 on imported hay, the imports were small for 1891 and 1892 as compared with those in the fiscal year ending June 30, 1890, when the \$2.00 duty was in force; under sixth class rates in the United States and a hay duty of \$2.00 from 1893 to 1897 the imports increased gradually to large proportions in 1896; with sixth class rates and the duty of \$4.00 restored in 1897 the imports decreased to a minimum in 1898 and 1899; and under the advance in rates on American hay from sixth to fifth class on January 1, 1900, the imports became larger in 1900 and 1901 than in any previous year above given except 1895 and 1896, when the \$2.00 duty was in force.

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The increase from sixth to fifth class rates on hay amounted from the Middle West to Boston points to from 50 cents per ton 60 per cent territory to \$1.40 per ton (116 per cent territory) equal on a minimum carload of 10 tons to from \$8.00 to \$14.00 per car. These amounts apparently mark the advantage given the Canadian product.

The Canadian hay coming to the Boston market is not better than the hay coming from the West. It also appears that the distance from the points of origin in Canada to Boston is less than it is from the Middle West section. Some hay is imported from the Province of Ontario in Canada, but the region in Canada from whence most of the hay carried to New England and New York City has been shipped is from points south and east of the St. Lawrence River in the Province of Quebec, and the rates from points in that section to Boston have been 18 or 19 cents per hundred, or from \$3.60 to \$3.80 per ton. About the same range of rates applies from these Canadian points to New York City. The rates according to a distance table put in by defendants appear to be from 1 to 4 cents higher from Canadian points to Boston and New York than for like distances to the same destinations from shipping points in the United States. It follows, therefore, that the rate per ton per mile afforded by these rates from Canada is to some extent higher than the fifth class rates for the same distance hauls on shipments originating in this country. The rates from Canada are commodity rates lower than fifth class rates, but so far as comparison of rates per mile affects the case, they cannot be found to work hardship upon the American product. But we do find that class rates from the section in Canada above described are higher than those for like distances in the United States in Official Classification territory; that the roads participating in the carriage of Canadian hay have for a period of years been charging on such hay destined to New England and New York City points commodity rates lower than fifth class rates; that under a sixth class rating for hay prevailing in the United States this adjustment did not operate unjustly to the competing American product, but that with a change in rates on American hay from sixth to the higher fifth class rates the advantage was as clearly with Canadian hay as if the rates on Canadian hay had themselves been to the same extent reduced. The defendant carriers

participating in the transportation of both Canadian and American hay are the Boston & Maine, Central Vermont, Boston & Albany, New York, New Haven & Hartford, New York Central & Hudson River, Delaware & Hudson, Canadian Pacific, Canada Atlantic and Grand Trunk. Some of these defendants operating in New England territory also make commodity rates, lower than class rates, on hay produced in New England. Such commodity rates on the Boston & Maine are about two-thirds of the fifth class rates between the same points:

5. New England States and the State of New York, while producing large quantities of hay, do not raise crops sufficient for the needs of consumers in those States, and the deficiency is supplied by hay from the Middle West or from Canada. The difference in rates from New York points and the Middle West under sixth class rates was apparently sufficient to enable producers in interior New York to market their hay in competition with producers in the Middle West. This is illustrated by a rate of 15 cents to New York City from 60 per cent territory in extreme western New York as compared with a rate of 20 cents from 80 per cent territory in Ohio. Such difference in rates is equal to \$1.00 per ton. Under present rates the difference between rates from those territories to New York City amounts to 6 cents per hundred, or \$1.20 per ton. The surplus production of hay in such States as Michigan, Ohio, Indiana, and perhaps eastern Illinois, must depend very largely upon the East for a market. There has been a demand for this Middle West hay in the eastern markets for many years, and this condition must be expected, in normal crop years at least, to continue. Generally speaking, the people of the eastern part of the United States are more largely engaged in manufacturing, while agricultural pursuits are followed in greater degree in the West. It seems clear, therefore, that as population and industries multiply the amount of hay produced in the east will become less, and the demand in that section for western hay, and even for that produced in Canada, will become greater. The advance from sixth to fifth class rates in effect on and after January 1, 1900, operated to divert shipments from parts of the Middle West to southern destinations. Whether such effect would continue throughout a series of years cannot be determined, as the variation in crops and consequently of de-

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mand in different consuming markets would necessarily produce results independent of the present difference in rates.

In Western Classification territory, which includes all that portion of the country west of the Mississippi River and Chicago, hay and straw are in class C, which takes lower than fifth class rates; and in the Southern Classification territory, covering generally the States south of the Ohio and Potomac Rivers and east of the Mississippi River, hay and straw are classed with grain in class D, which takes rates lower than those fixed for any other class in that classification. In Western Classification territory grain is classed higher than hay as class B, but both grain and hay are carried generally in that territory at commodity rates lower than the class rates and in some instances hay rates are less than those in force on grain. The scales of rates in both the Western and Southern territories range higher than rates in Official Classification territory, but that does not alter the fact that the relative adjustment of rates on hay and straw as compared with grain and various other commodities is more in favor of hay and straw in the territories of the Western and Southern Classifications than it is in Official Classification territory.

6. Straw is a by-product of grain of comparatively low value, and is used mainly for bedding stock and packing and in manufacturing. Hay is a food product used chiefly for stock feeding, but it is also used for packing and, to some extent, for manufacturing purposes. In Official Classification territory hay is graded in market before it is sold, and the price depends upon the grade, the terms used according to the testimony being Nos. 1, 2, 3, Rejected, and No Grade. The terms Heated, Badly Damaged, and Prime or Choice are also used, the latter being better than No. 1. Timothy hay of No. 1 grade appears in this case to be regarded as the standard. There is also prairie hay largely grown in the Middle West, the prices for which, as given in the record, are considerably below those stated for No. 1 Timothy. This prairie hay also has different grades.

In preparing hay for shipment to market, it is compressed into bales of different sizes and weights. It appears that three different sizes are principally used and known as follows: The Perpetual, which is 18 by 14 inches and weighs from 80 to 90

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pounds; the Spencer, which is 17 by 22 inches and weighs from 125 to 160 pounds; and what is known as the Large Bale, which weighs, according to compression, anywhere from 185 to 250 pounds. More of the Spencer bale than of any other kind is made in the Middle West, but the large bale commands the higher price in northern and eastern markets. The reason for this is that the density of the large bale is somewhat less than that of the smaller, and the tighter baling is liable to injure the fibre of the hay and make it less valuable for feeding purposes. The difference in price in favor of the large bale in those markets is said to be about \$1.00 per ton. But little hay is exported from the United States. When exports are made the small bale is used, and the compression of the bale is much greater than when the hay is for domestic use, for the reason that the ocean rates are computed according to space.

7. The hay crop of the United States and home value thereof for the years 1895 to 1901, inclusive, as estimated by the Department of Agriculture, ranged as follows:

	Crop in tons.	Home value per ton.
1895	47,078,541	\$8.35
1896	59,282,158	6.54
1897	60,664,876	6.61
1898	66,376,920	6.00
1899	56,655,756	7.27
1900	50,110,906	8.89
1901	50,590,877	10.00

Corresponding figures for the States of Indiana, Ohio, Michigan and Illinois, which may be taken for the purpose of this case as constituting the Middle West, for the years 1898 to 1901, inclusive, were:

	Crop in tons.	Home value per ton.
1898	9,952,901	\$6.095
1899	8,243,160	8.245
1900	7,163,285	9.41
1901	11,900,915	9.39

For the New England States, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut, the figures were:

	Crop in tons.	Home value per ton.
1898	4,773,994	\$9.845
1899	3,555,746	13.23
1900	3,473,081	15.38
1901	4,654,627	12.21

In New York, Pennsylvania and New Jersey the crops and home values were:

	Crop in tons.	Home value per ton.
1898	10,777,581	\$7.80
1899	7,924,796	12.54
1900	6,521,654	15.46
1901	10,713,570	11.79

These farm prices as compiled by the Department of Agriculture from reports made from time to time in each section are of necessity merely approximate, and they do not show the prices received for the different grades.

Average prices in the New York City market have ranged as follows:

	Prime.	No. 1.	No. 2.	No. 3.
1898	\$14.40	\$13.20	\$11.20	\$ 8.20
1899	15.80	14.60	13.20	11.40
1900	18.20	17.40	16.20	14.60
1901	18.80	17.80	16.80	15.20

8. The cost of baling and putting on the cars is stated generally to be about \$1.50 per ton. It is also testified that some expense is involved in hauling the hay to the station, which is stated by one witness to range from 50 cents to \$1.50 per ton. Probably 50 cents would be sufficient to cover this item. This additional expense of \$2.00 per ton therefore covers the full average cost of placing the harvested hay aboard the cars and ready for transportation. The greater portion of hay consigned to eastern markets goes to commission men who make varying charges. This commission charge, though differing somewhat in various markets, as generally applied is about \$1.00 per ton. There are also commission merchants in the West who handle hay consigned to them on commission for 50 cents a ton, in Chicago a sampling or grading charge of 20 cents per ton is made, and there is also a weighing charge of from 15 to 25 cents per car. The general cost of placing hay in the eastern market may, however, be regarded as made up of the following items: Baling and delivery on board cars, \$2.00; commission, \$1.00, and the transportation at prevailing rates. Using these figures for those items the cost of putting hay in the New York City market which was shipped from various producing territories in the Middle West in 1899 and 1900 was as follows. With this will

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also be found some of the differences between the prices in that market and such cost of marketing. The transportation cost for 1899 was at sixth class rates, and that for 1900 was at fifth class rates.

In 1899 the cost of marketing in New York City from 80 per cent territory was \$7.00; from 84 per cent territory, \$7.20; from 92 per cent territory, \$7.60; from 100 per cent territory, \$8.00; from 110 per cent territory, \$8.50; from 116 per cent territory, \$8.80. The difference between such marketing cost and the market price in New York City was, from 80 per cent territory, prime hay, \$8.80; No. 1, \$7.60; No. 2, \$6.20; No. 3, \$4.40. From 100 per cent territory such differences were, prime hay, \$7.80; No. 1, \$6.60; No. 2, \$5.20; No. 3, \$3.40.

In 1900 the cost of marketing in New York City was, from 80 per cent territory, \$7.80; from 84 per cent territory, \$8.04; from 92 per cent territory, \$8.52; from 100 per cent territory, \$9.00; from 110 per cent territory, \$9.60; from 116 per cent territory, \$9.96. The differences between such marketing cost and the market price in New York City were, from 80 per cent territory, prime hay, \$10.40; No. 1, \$9.60; No. 2, \$8.40; No. 3, \$7.00. From 100 per cent territory such differences were, prime hay, \$9.20; No. 1, \$8.40; No. 2, \$7.20; No. 3, \$5.80. From 110 and 116 per cent territories the differences between the cost of marketing and the market price were of course considerably less.

The prices of hay in the Boston market during 1899 and 1900 ranged less than in the New York market. As before shown, the rates to Boston in 1899 were 2 cents per 100 pounds or 40 cents per ton higher than the rates to New York, and in 1900 they were 3 cents per 100 pounds or 60 cents per ton higher than the rates to New York. This of course results in less differences between the market price and the cost of marketing than those above shown based upon the market price in New York.

One fact shown by these figures is that the cost of putting Middle West hay in the eastern market approximates or exceeds the value of that hay after deducting the cost of marketing, and that the advance in rates made by defendants, and which is illustrated by 70 cents to \$1.16 per ton from that section of the country to New York, has added materially to the cost of mar-

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keting the product. Such advance has been borne by producers, middlemen and consumers, but to what extent by each class is impossible to determine. While the farmer has received higher prices for hay since January 1, 1900, the date when the advance in rates became effective, it is matter of common knowledge that the prices of commodities generally have ranged higher in the last few years. Moreover, with hay selling at prices prevailing in 1898, when the average farm price in the Middle West group was as low as \$6.09, the advanced rates would constitute a still greater proportion to be deducted from the market price and to an extent therefore impose a greater burden upon the producer. Undoubtedly one reason for the continued high price of hay in 1901 was the continued high range of prices for grain during that year, but the rates upon grain were not increased to correspond with the advance in rates on hay.

9. Hay as an article of food for animals comes in competition with some kinds of grain and with feed prepared from grain. Although hay, grain and practically all of the products of grain were together in the sixth class of the Official Classification for a long period of years (except the few weeks in 1894 hereinbefore mentioned when hay was in fifth class), grain and a lengthy list of grain products have taken and do now take commodity rates under defendants' tariffs which are considerably lower than their sixth class rates. The all-rail rates on corn, oats, wheat and rye, and upon feed, bran, flour and other grain products from Chicago to New York, not for export, are the same, 17½ cents per 100 pounds, while the rate on hay was 25 cents at sixth class, and since January 1, 1900, has been 30 cents per 100 pounds. It was testified by one of defendants' witnesses that during the five years prior to the hearing in 1901 the actual grain rate from Chicago to New York did not exceed 15 cents per 100 pounds. The grain and grain products rates from other points are made by percentages of the Chicago rate in the same manner that rates on hay are figured by percentages of the Chicago rate. The action of defendants, therefore, in advancing hay from sixth to fifth class rates was to widen still further the actual difference between hay and grain and grain products which are also used for feeding purposes, although the nominal classification of both had

long been the same. At different times prior to 1895 sixth class rates were actually in force upon grain and grain products in this territory. Except in New England neither hay nor straw has been given commodity rates lower than sixth class to any extent during the past 15 years. The grain products which are given rates as low as those fixed for grain in Official Classification territory are as follows:

Avena,	Hulled Corn,
Bran,	Kaffir Corn Meal,
Breakfast Food,	Maizeline,
Brewers' Dried Grain,	Maizone,
Brewers' Meal,	Malt,
Buck Wheat,	Malt Silver Flake,
California Breakfast Food,	Malt Skimmings,
*Cerealine,	Malt Sprouts,
Corn Flour,	Meal, Linseed,
Corn Meal,	Middlings,
Cotton Seed Cake,	Mill Feed,
Cotton Seed Hulls,	Oat Hulls,
Cotton Seed Meal,	Oat Meal,
Cracked Corn,	Oil Cake,
Cracked Wheat,	Oil Meal,
Cream of Maize,	Pearl Barley,
Distillers' Dried Slop,	Pearl Wheat,
Farina,	Potato Flour,
Farinos,	*Quick Malt,
Feed,	Rice Flour,
Flake Malt and Flakes,	Rice Meal,
Flour,	Rolled Oats,
Flour, prepared,	Rolled Wheat,
Fruentum,	Rye Flour,
Germos,	Screenings,
Glucose Feed,	Ship Stuff,
Gluten Meal,	Shorts,
Grits,	Sprouted Barley,
Groats,	Starch,
Ground Corn,	Sugar Meal,
Healthall,	Vitos,
Hominy,	Wheat Meal.
Hominy Feed,	

An examination of commodities in the fifth and sixth classes shows that food articles are classified therein as follows:

FIFTH CLASS.

Animal or Poultry Food, prepared	Citron Peel,
in packages,	Cocoanut, desiccated,
Apples, dried and green,	Coffee,
Apple and Fruit Butter,	Curd Milk,
Beans, N. O. S.,	Fish and Meat, desiccated,
Broths and Soups,	Dog Food, in bags,
Canned Fish,	Fish, smoked, pickled or salted,
Catsup,	Sardines, smoked, pickled or salted,
Cauliflower, salted or in brine,	Flour, potato,
Chicory,	Hay, pressed in bales,
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FIFTH CLASS—Continued.

Kraut, in wood,	Potatoes,
Lard,	Rye, roasted,
Maccaroni,	Sago,
Meats, cured,	Split Peas,
Milk, can stock,	Sugar,
Mince Meat,	Syrup,
Oysters, spice or cold,	Tapioca,
Pears, green, in keg,	Vegetables, canned,
Peas, dried,	Vermicelli.
Pickles,	

SIXTH CLASS.

Barley,	Malt,
Bran,	Meal, Linseed,
Cereal Products or Preparations,	Mill Feed,
Chop Feed,	Oat Hulls,
Corn, N. O. S.,	Oatmeal,
Corn, Pop,	Oats,
Cotton Seed Meal,	Rice Chaff or Rice Hulls,
Cracked Wheat,	Rye,
Cracklings,	Sago Flour,
Farina,	Seed, Cotton, Flax and Linseed,
Feed, ground,	Sugar Meal,
Flour or Meal,	Tapioca, flour,
Glucose,	Wheat,
Grain, N. O. S.,	Wheat, cracked.
Grits,	

The coarser food articles, except hay, as well as the finer grades of grain products, though nominally in sixth class, are, as above stated, given commodity rates lower than sixth class rates. The fifth class food articles just recited are nearly all merchandise articles, and not comparable in character, use, or to much extent in value, with the raw product like hay. Some exception to this may be found in potatoes, an agricultural product, but the use of that commodity differs widely from that of hay. Examination of the classification further discloses that wooden articles in the rough are given sixth class rates, taking nominally the same class as lumber, though in actual practice lumber and many of the wooden articles mentioned frequently, if not usually, are given commodity rates. The system of the classification appears to be to group all articles of the same general character in one class, but hay, an agricultural product, was made an exception by the advance from sixth to fifth class.

10. The following articles taking carload rates were advanced

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in the Official Classification from sixth to fifth class January 1, 1900:

Articles.	Minimum Weight.
Actinolite Ore, ground, in bags	30,000
Barrels, Half Barrels, Casks and Tierces, N. O. S., new or old,	12,000
Basket Material, N. O. S.	24,000
Blue Vitriol	30,000
Brewers' Chips or Shavings	24,000
Carriers, ale, beer, beer tonic, or porter	20,000
Cement, asbestos, boiler-covering, and magnesia	30,000
Cloth Boards, wooden	24,000
Cocconut Husks	24,000
Cocconut Skin Shavings or Refuse	24,000
Coffee, in single or double bags	30,000
Coffee, ground or roasted	24,000
Copperas	30,000
Corn Cobs and Husks	20,000
Corrosive Pots	30,000
Cotton-Seed Hulls or Motes	30,000
Creosote, in wood	30,000
Fish, smoked, pickled or salted	30,000
Flour potato, in sacks or barrels	30,000
Glauber Salts, in barrels	30,000
Hay, pressed in bales	20,000
Jute Butts	30,000
Mortar Stains or Colors	30,000
Moss, nursery and peat	24,000
Oil, creosote and pine, in barrels	30,000
Oil, creosote and pine in tank cars	Capacity of car.
Oxide of iron, in kegs, barrels or casks	30,000
Paints, earth, iron, metallic	30,000
Peas, dried, coarse, in bulk	30,000
Pea Hulls	24,000
Peat or Peat Moss	24,000
Pitch, N. O. S.	30,000
Scrap Rubber	30,000
Sea Grass, pressed in bales	20,000
Soap, Soft Soap, Soap Extracts, Powders, Tablets, Soapstone	30,000
Starch, in sacks, boxes, or barrels,—ground in barrels ..	30,000
Straw, N. O. S., pressed in bales	20,000
Sugar, N. O. S., in boxes, bags, barrels, or half barrels ..	30,000
Sulphate of Iron	30,000
Shavings, wood, in bales	20,000
" " in bulk	20,000
Tar, Coal, and Coke, in barrels	30,000
Tar, Coal, and Coke, in tank cars	Capacity of car.
Tobacco Stems and Fertilizers.....	24,000
Turpentine, in tank cars	Capacity of car.
Vinegar Chips or Shavings ..	24,000
Washing Powder, dry, in packages	30,000

The only food articles in the foregoing list are: Coffee, in single or double bags; Coffee, ground or roasted; Flour, potato, in sacks or barrels; Fish, smoked, pickled or salted; Hay, 9 I. C. C. REP.

pressed in bales; Peas, dried, coarse, in bulk; and Sugar, N. O. S., in boxes, bags, barrels, or half barrels.

The following articles were afterwards restored to the sixth class in the Official Classification; Carriers, ale, beer, beer tonic, and porter; Peas, dried, coarse, in bulk; Shavings, wood, in bales or bulk; Tobacco Fertilizers, compressed in bales or sacks; and Tobacco Stems, in bales.

11. For the year ending June 30, 1900, the total railway tonnage of hay alone was 4,112,092 tons originating on reporting roads, and 3,721,714 received from connecting roads, making a total of 7,833,806 tons reported. The total tonnage so reported for all kinds of grain was 64,998,890 tons, flour 15,305,693 tons, other mill products 9,395,861 tons, tobacco 1,495,872 tons, cotton 5,980,347 tons, fruits and vegetables 13,106,026 tons, and other products of agriculture 3,824,501 tons. It should be noticed that, with the exception of cotton, tobacco, flour and hay, the other figures above given are totals for different articles belonging to a class, corn, wheat, rye, oats, barley, etc., being included under grain. These figures cover the whole United States and exceed the actual tonnage carried, because the tons reported to the Commission as received from connecting lines are included in the reports of other roads as originating upon such roads, except such as may have been received from water carriers. It is unnecessary in this case, however, to go into the extent of such duplication of tonnage in the carriers' annual reports.

The hay tonnage, although vastly below the aggregate for grain and less than that for flour, is very large as compared with any other of the great mass of commodities. We are unable, after careful examination, to find any other single article generally taking class rates which provides the railroads with an aggregate tonnage equal to that of hay. In other words, articles of tonnage equal to or exceeding that of hay, are, as a rule, given commodity rates. It may be urged that lumber is an exception, but there are so many instances where that commodity is given a special rate that it cannot be so regarded; and fruits and vegetables taken together cover numerous distinct articles, all of which must be included to make up the aggregate fruit and vegetable tonnage stated above.

Hay is also an article of universal consumption, and is pro-

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duced in every State and Territory. This fact is emphasized by the showing that out of over 50,000,000 tons produced in 1900 less than 7,850,000 tons were reported carried by the railroads. Over one-third of the hay grown in 1900 and one-half of the total crop of 1901 were raised in Official Classification territory, and in view of the large demand in that more thickly populated section of the country it is evident that a very large proportion of the total amount transported by railroads in those years was carried over roads within Official Classification territory. In our report on statistics for the year ending June 30, 1900, a table is given on page 66 showing the tonnage reported, as originating upon the roads making reports in three large sections or divisions of the country, of general classes of traffic described as products of agriculture, products of animals, products of mines, products of forest, manufactures, merchandise and miscellaneous. The first division or section of country there mentioned comprises statistical groups I, II, and III, and practically covers Official Classification territory with the exception of the State of Illinois. The data pertaining to these groups upon which the totals for products of agriculture as given in that report were computed, give the following tonnage originating upon reporting roads: Grain, 7,359,447 tons; flour, 2,321,884 tons; other mill products, 1,798,926 tons; hay, 2,485,149 tons; tobacco, 296,843 tons; cotton, 127,848 tons; fruit and vegetables, 3,026,615 tons; other products of agriculture, 650,528 tons. These figures show greater tonnage of hay originating in that territory than any other product of agriculture, except "grain" and "fruits and vegetables," both of which terms include a number of distinct products, while the hay tonnage is stated separately.

12. The element of risk is not regarded by the carriers themselves as having much bearing in this controversy. Few claims for loss or damage of hay in transit are made upon the carriers. The testimony on their behalf was to the effect that in estimating the proper rating of a commodity the higher value of that commodity as compared with the value of other articles, particularly in the lower classes, would not be deemed to constitute such additional risk in transportation as to warrant a higher classification solely upon that account. In other words, greater risk because of much higher value is one of the matters
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1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's annual message to Congress. The President discusses the state of the Union, the progress of the war, and the needs of the country. He also mentions the recent discovery of gold in California, which has led to a large influx of people into the state.

2. The second part of the document is a report from the Secretary of the War Department, dated January 10, 1862. It contains information about the military situation in the West, including the movements of the Union and Confederate armies. The report also mentions the discovery of gold in California, and the impact it has had on the local economy and population.

3. The third part of the document is a report from the Secretary of the Interior Department, dated January 15, 1862. It contains information about the land and mineral resources of the United States, including the discovery of gold in California. The report also mentions the need for more land and mineral surveys, and the importance of protecting the public lands.

4. The fourth part of the document is a report from the Secretary of the Navy Department, dated January 20, 1862. It contains information about the state of the Navy, including the number of ships and the progress of the construction of new vessels. The report also mentions the need for more ships and the importance of maintaining a strong Navy.

5. The fifth part of the document is a report from the Secretary of the Treasury Department, dated January 25, 1862. It contains information about the state of the Treasury, including the amount of money in the Treasury and the progress of the collection of taxes. The report also mentions the need for more money and the importance of maintaining a strong Treasury.

the Boston & Maine leased spaces in its hay sheds to hay dealers at a nominal rent, and when the spaces were filled allowed the hay to remain in cars upon the tracks. Under this practice hay, at times at least, arrived in Boston regardless of the market demand, and as many as 1,500 cars were at one time waiting to be unloaded. The hay stood in the cars for periods ranging from a week to three or four months. This abuse was remedied by the action of the company in taking the sheds under its own management, allowing a period of ten days at a charge of one dollar, and certain other charges for greater time. These charges prevail whether the hay is unloaded in the sheds or left in the cars. As a result, less than 100 cars were upon the track at the date of the hearing, the hay usually arrives in Boston according to demand, and is unloaded about as fast as it comes in. From 60 to 80 cars are usually upon the tracks, which is less than two days' supply.

14. Up to 1890, and possibly a few years later, shippers were frequently unable to load cars furnished for hay up to the prescribed minimum weight of 20,000 pounds. This made the cost of transportation in those instances exceed the sixth class rate. As between 100 per cent territory and New York, a car loaded with 18,000 pounds of hay would, at the sixth class rate, under the minimum carload rule of 20,000 pounds, pay about 27.8 cents as against the sixth class rate of 25 cents. The rate on 16,000 pounds of hay at the 20,000 pounds minimum and sixth class rate would be 31¼ cents. This condition, however, has not existed to any considerable extent since about the year 1894, larger cars having come rapidly into general use during the past decade. Improved methods of baling enable shippers to some extent to bale the hay with reference to the size of the cars, and this permits heavier loading in some degree. The defendants further contend, however, that since larger cars which easily hold the minimum weight have been generally provided, the shippers have been inclined to bale the hay more loosely, and so diminish the practicable earning capacity of the car. On the other hand, cars may be used for hay which cannot be economically employed in the grain traffic, and witnesses for complainant say that smaller instead of larger cars are furnished for hay, thereby preventing the shipment of larger carload quantities. The inference is warranted, and we find that

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at times or in particular localities each of these conditions has resulted, but it does not affirmatively appear that either has become a general practice.

15. Grain is transported in immense quantities over the Great Lakes to Buffalo and other eastern lake ports, and carried from thence mostly by rail in large lots to the seaboard. This competition has potential effect upon the rates of the all-rail lines. Much of this competitive grain goes to the seaboard for export at lower rates than those applied to domestic shipments. Similar competition, but to much less extent, obtains in the traffic in flour and some other grain products. Hay is not shipped, in any considerable quantity at least, by water from Michigan or any part of the Middle West.

On the other hand, hay grown in one section is competitive with the hay grown in most other sections of Official Classification territory and in Canada, an adjacent foreign country, and the railroads in those sections are interested in preserving the market demand for hay from the various producing localities. It is also more or less competitive in use and consuming demand with oats, corn, bran, mixed feed, and perhaps some other kinds of grain or grain product, and this condition affects the transportation rate on hay.

16. Hay, as before indicated, is much lighter freight than grain and many other commodities. A car capable of containing 20,000 pounds of hay may be loaded with 40,000 or more pounds of grain. Hay has also been compared in this case with potatoes and apples. The traffic carried over the Pennsylvania lines west of Pittsburgh between January 1 and September 30, 1901—nine months—shows the following differences in traffic, weight per car and average revenue:

	Cars.	Average Pounds per Car.	Average Revenue per Car.
Hay	16,587	21,600	\$19.40
Grain	69,357	53,000	30.89
Apples	461	27,700	22.36
Potatoes	2,178	32,400	25.80

This statement does not show the average distances the traffic was hauled. For the Michigan Central a similar statement is in the record which shows the average weight in pounds per car from 1897 to 1900 and nine months of 1901. These range

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as follows: Hay, 20,359 to 21,122; grain, 36,110 to 49,118; apples, 25,763 to 32,839; potatoes, 27,205 to 29,084. Various tonnage statements in evidence show the shipment of hay in car lots of from 20,000 to 30,000 pounds, but apparently the general average is about or nearly 22,000 pounds. Some cars of grain have been shipped containing over 60,000 pounds, and the carriers are now building cars having much greater capacity, estimated at from 80,000 to 110,000 pounds. With greater capacity of the car there is a wider difference in the relative amounts of hay and grain that can be loaded in it. The present general car equipment, however, accommodates hay and grain, as appears from all the tonnage statements, in about the following average proportions: Hay, 22,000 pounds; grain, 50,000 pounds. Possibly this slightly understates the average car of grain upon all of the lines, but the figures are approximately correct and will serve for the purposes of this case.

Upon that basis the revenue per car from 100 per cent territory to New York at present rates would be \$66.00 for hay and \$87.50 for grain, and from 60 per cent territory it would be \$39.60 for hay and \$52.50 for grain. At sixth class rates the hay car revenue would be \$55.00 from 100 per cent territory and \$33.00 from 60 per cent territory. The difference in favor of grain is greater or less as the rates are greater or less from the various territories, but in the carriage of hay and grain between any two given points the revenue per car is considerably more upon grain than upon hay. It does not follow, however, that the average revenue *per car per mile* for all shipments of hay and grain, including all of the short as well as the long distance traffic, will show considerable or any excess in favor of grain at present rates. Only one of the tonnage and revenue statements put in evidence shows the average distances over which the total traffic in hay and grain was carried for any period, but that statement covers the traffic of one of the most economically operated and best equipped roads in Official Classification territory, the Lake Shore & Michigan Southern Railway, for the period of nine months between January 1 and September 30, 1901, and shows the carriage of large quantities of both kinds of traffic. Following are the totals and averages shown in that statement, the average tons per car having been correctly reduced to pounds:

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**SHIPMENTS OVER LAKE SHORE & MICHIGAN SOUTHERN RAILWAY
JANUARY 1 TO SEPTEMBER 30, 1901.**

No. of cars.	HAY.		Earnings per car.
	Average weight per car in pounds.	Average distance hailed. Miles.	
11,367	21,815	243.3	\$18.06
	POTATOES.		
2,232	33,175	216.1	\$15.44
	APPLES.		
1,043	26,194	241.6	\$19.02
	GRAIN.		
48,388	49,610	306.1	\$22.12

The earnings per car per mile computed from these figures are: Hay, 7.4229 cents; potatoes, 7.1448 cents; apples, 7.8725 cents; grain, 7.2026 cents. The hay as compared with the grain was carried an average of 63 miles less distance. The average rates per 100 pounds were hay, 8.28 cents; potatoes, 4.66 cents; apples, 7.26 cents; grain, 4.46 cents.

Upon the estimate that the average increase on hay from sixth to fifth class rates has been 20 per cent, the average revenue of the hay per car at sixth class rates would have been \$3.01 less, or \$15.05, and the revenue per car per mile would have been 6.19 cents. The average rate per 100 pounds at the above estimated sixth class rates would have been 6.9 cents.

These figures further indicate that between the same points of shipment and destination with two trains, one loaded with hay and the other with grain, the revenue from the train of grain would greatly exceed that afforded by the train of hay, but that taking hay as it comes to the railroad at all the various points of shipment and is carried over all distances to the various points of destination, and grain as it is offered, carried and delivered, the difference in revenue per car per mile may be in favor of hay, as it was in the case of the Lake Shore. The grain business, if handled principally as through freight in solid trainloads, is apparently hauled at less cost to the carrier, and it is probable that grain generally is somewhat less expensive traffic to the carrier than hay is. On the other hand, considering the tonnage of hay, that article is perhaps carried by the roads at less cost than some other articles in fifth or sixth

classes. As numerous considerations enter into any comparison of transportation cost to the carriers, we are unable to estimate or find definitely in that respect.

The dead weight of the hay car is said to be about the same as that of the grain car. The average weight of cars which will carry 22,000 pounds of hay or 50,000 pounds of grain is about 32,000 pounds. With this added, the revenue per hundred pounds or per ton is of course reduced. For the Lake Shore, according to the table above given, the relation of earnings per hundred pounds, including the weight of the car, was about 3.35 cents for hay and 2.71 cents for grain. There must be, however, some greater weight to a car capable of carrying 60,000 pounds of grain than to a car limited to 40,000 pounds, or as between any two cars having greatly different capacities, and consequently some additional cost of hauling to the carrier, but how much and whether trifling or appreciable cannot be determined from this record.

There are numerous other essential differences between grain and hay and between potatoes, apples and hay as well. Grain is shipped from the West to the seaboard in large quantities and from Chicago it goes frequently in train loads. On the Lake Shore trains of grain are often composed of as many as 50 cars. This greatly reduces the total cost of operation in respect to the grain traffic. Hay, on the other hand, is not shipped eastward from Chicago to any extent, and is not carried in large trainloads from any point in Official Classification territory. Generally speaking, it must be taken as offered at the several shipping points and hauled as a rule in general freight trains. Nevertheless, it affords the carriers a steady and reliable traffic throughout the greater portion of the year, which is of large volume in the aggregate, and thereby furnishes a considerable proportion of their general freight business. Grain is commonly shipped loose in bulk, while hay is carried only in bales. Grain cars must be tight and provided with "grain doors," which expense, equal to 75 cents or \$1.00 per car, is borne by the carrier. Any ordinary car in good running order may be used for hay. Grain is carried over very long distances and is concentrated at large centers for through shipment, while hay is carried over relatively shorter distances, is forwarded generally in trains at the reasonable convenience of the carrier,
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and delivery within any short period is not usually required. The value of grain per car greatly exceeds the value of a carload of hay. The prices vary according to the locality and market conditions, but some idea is afforded by an estimate of \$500 for a 50,000-pound car of wheat and \$165 for a 22,000-pound car of hay. Notwithstanding such greater value, grain is sold upon close margins, and the rate must be fairly low to enable free movement of the traffic. This condition also applies to hay. Both are coarse food articles, and to some extent competitive with each other, but they differ widely in the foregoing, and doubtless in some other respects as articles for transportation.

Still wider differences appear as between hay and potatoes and hay and apples. The value of a car of potatoes or apples is greater than that of a car of hay. The difference between potatoes and hay in this respect ranges well up with the difference in value as between grain and hay, and the value of a car of apples depends largely upon the variety and condition of the fruit, but it is generally largely in excess of the value of hay. The volume of the hay traffic is vastly greater than that of either potatoes or apples. Hay is a non-perishable and general agricultural product, while the potato is a staple vegetable food, and the apple a kind of hardy fruit; both are perishable commodities. In consuming markets potatoes and apples are merchandise articles very frequently retailed in small quantities to families, while hay is often sold by the ton or in larger lots, and never, or if so, but rarely, in less quantity than a bale.

Traffic moving in large volume generally takes lower classification and rates on that account. The Chairman of the Official Classification Committee testified that, as a rule, the classification is lower if the volume is greater. The greater volume of hay as compared with other articles is shown in preceding findings. Some further illustration of the relative amounts of tonnage furnished by the four commodities last mentioned, counting grain as one, is afforded by the Lake Shore table above given. The total gross revenue to the Lake Shore on the grain and hay traffic shown in that table was \$1,070,342.56 on grain and \$205,288.02 on hay, the grain tonnage was nearly ten times that of hay, and the rates on grain were greatly below the rates on hay. The total revenue on potatoes was \$34,362.08 as com-

pared with \$205,288.02 for hay, and the hay tonnage was about 3½ times that of potatoes. The total revenue for apples was \$19,837.86 as against \$205,288.02 for hay, and the hay tonnage was about 9 times the tonnage of apples. Yet these three articles are all in class 5 of the classification.

Upon the copy of classification put in evidence numerous commodities in fifth class are marked, and it is testified by one of defendants' witnesses that all or nearly all of those articles furnish heavier loads and therefore produce greater revenue per car than hay does at fifth class rates. But this is not an exceptional condition. The same showing can be made as between some selected article and other articles in each of the six classes, and comparisons indicating differences in this respect may be as many as the number of articles differing from each other in bulk and in weight. It appears, on the other hand, from merely incidental examination of certain rate sheets, that a number of articles in fifth and sixth classes are given special rates and minimum carload weights under which they produce less revenue per car, on the haul from 100 per cent territory to New York, for example, than either fifth or sixth class rates applied to hay with a minimum of 20,000 pounds. Among these are such finer kinds of food products as cerealine, cream of maize, frumentum, maizeline, malt silver flake and quick malt, all taking the commodity rate on grain, and also bleach, and some kinds of woodenware. These are found in tariffs of the Pennsylvania System. Some lumber or wooden articles from Michigan points appearing in the Pere Marquette rate sheets are in the same category.

17. During most of the time since about the middle of 1899, the traffic coming to the defendant carriers has been so great as to call for the use of all their equipment, and at different periods these carriers have been unable to promptly move the freight requiring transportation. With practically all available cars pressed into service and their business demanding still more, they prefer the kinds of traffic which yield the greatest revenue; but when traffic is scarce and cars are idle they are anxious to secure freight of any description. The basis used by defendants in most of their comparisons is the revenue per car, but as before found in many cases this disregards the effect of distance, volume and resulting gross revenue. Numerous arti-

cles in both classes 5 and 6 of the classification yield greater car revenue than hay between given points, but our attention has not been called to any article actually carried at either fifth or sixth class rates which affords the carriers greater total revenue, or which would do so if hay were carried at sixth class rates. There may be some, but we are unable to discover any from careful examination of the reported tonnage, the rates and the classification.

Any article can be carried at rates so low that, no matter how great the aggregate tonnage may be, the traffic would be unprofitable to the carrier. The further question then arises whether the cost of carrying hay as it is usually shipped is so great that it would under the application of sixth class rates burden other traffic with part of the cost of carriage legitimately pertaining to its movement. It is not understood that this is distinctly claimed by the defendants. A single sentence in defendants' brief (page 100) does state that the present hay rate is below the *average cost* of hauling freight, but the figures employed in that connection are all used in an endeavor to show that the average ton-mile freight rate is higher than the ton-mile rate on hay. Neither is there any direct proof that the average receipts per ton per mile received by the defendants from hay are below the average receipts per ton per mile received by them from all freight, and this cannot be shown in the absence of testimony indicating the average ton-mile rate on hay upon the defendant roads severally or collectively. The defendants use a distance from Chicago to New York of 1,012 miles and figure that at 30 cents per 100 pounds the rate per ton per mile on hay is slightly less than 6 mills, and they compare this with the average ton-mile rates reported by the roads for all freight carried over their lines, high or low, and whether carried a few miles or over the extreme length of line. No proper comparison of the kind can be made, nor can any accurate idea of the average rate per ton per mile actually received from hay be obtained by figuring the ton-mile rate upon a single ton and the rate in force between any two selected points. If we had before us the actual number of tons of hay carried one mile by the defendants and the gross revenue received by them therefrom, we could determine the average revenue per ton per mile received by those roads from hay. That

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is the basis upon which the average receipts per ton per mile for all freight is determined, and it is the only way of securing even an approximate statement of that character for any single commodity.

The average rates per ton per mile received by the defendants on all freight in the year ending June 30, 1901, ranged from 4.54 mills on the New York, Chicago & St. Louis and 4.89 mills on the Lake Shore, to 11.34 mills on the Boston & Maine and 14.79 mills on the New York, New Haven & Hartford.

Although we do not know the average for hay or any other single commodity, it is evident that with a ton-mile rate of 6 mills for so long a distance as that from Chicago to New York, and some approximate figure for other 100 per cent points in the Middle West, the average hay rate per ton per mile for all distances, short and long, was greater than the general average on those roads having a low general average ton-mile rate and less on those roads having a high general average ton-mile rate. Similar wide differences in average receipts per ton per mile are shown in those computed for the three groups wholly covered by Official Classification territory. The average ton-mile rates for such groups were, Group 1 (New England), 11.52 mills; Group 2 (New York, Pennsylvania, etc.), 6.13 mills; Group 3 (Ohio, Michigan, Indiana, etc.), 5.46 mills. The record contains statements showing rates per ton per mile on hay much higher than the rate per ton per mile from Chicago to New York, as follows:

From		To New York City.	
Clayton,	N. Y.	.....	10.3 mills
Ogdensburg,	"	.....	9.7 "
Richville,	"	.....	10.1 "
Massena Springs,	"	.....	9 "
Port Huron,	Mich.	.....	7.3 "
Imlay City,	"	.....	8.2 "
Pontiac,	"	.....	7.59 "
Owosso,	"	.....	7.73 "
Midland,	"	.....	8.3 "
Emmett,	"	.....	7.92 "
Gladwin,	"	.....	8.78 "
Winchester,	Ind.	.....	7.7 "
Fort Wayne,	"	.....	7.07 "
Neoga,	Ill.	.....	7.37 "

At the fifth class rate the rate per ton per mile over the Lake Shore, New York Central and Boston & Albany from Chi-
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cago to Boston, for so great a distance as 1,038 miles, is 6.45 mills. These figures, however, show simply the rate per ton per mile for a single ton and are figured merely from rates and distances. The Lake Shore table, however, shows actual tonnage, distance and revenue expressed in averages for nine months in 1901. Computations made from the figures there given make the average rates per ton per mile upon the articles as follows: Hay, 6.85+ mills; apples, 6.02— mills; potatoes, 4.308— mills; grain, 2.914— mills. If at the above rate per ton per mile for hay that article was carried at a loss, then the other commodities were also carried at a loss to the carrier, but it will be noted that the hay rate per ton per mile and that for apples also was much greater than the reported average received by that company for all freight during the year 1900.

Comparison of average ton-mile rates based upon actual movement serves to show the relative earnings per mile, but cannot indicate the relative cost, and it is concededly impracticable to demonstrate with any degree of accuracy the cost to a railroad company in transporting any given commodity, or even that of all freight as distinguished from the cost of carrying on its passenger business. Railway classification and rates are not based upon cost of service. In a general way that element must have consideration, but commercial conditions, including characteristics of the traffic and the amount of probable gross and net revenue, are the really determining factors.

18. One reason given by defendants for the changes made in the classification of 1900, including hay and straw, is that there had been a pronounced increase in the prices of lumber and iron and other articles used in railway construction and maintenance, and also in the price of labor, and we find that about the year 1899 the cost of railroad material had increased considerably over the prices which prevailed in the years 1893 to 1897. Steel rails had become much more expensive, and the cost of cars had also increased. Since the early part of 1900 prices of rails and some of the other articles have increased and decreased to some extent. The wages paid to railway labor have also somewhat advanced since the panic years in the last decade, and the number of employees is much greater than it was in those years. Statistics compiled by the Treasury Department show the following range of prices in percentages in

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1887 and 1899, the prices in 1860 being taken at 100 per cent: Fuel and lighting, 88.6 per cent in 1887 and 90.8 per cent in 1899; metal and implements, 74.9 per cent in 1887 and 83.2 in 1899; lumber and building material, 126.5 per cent in 1887 and 94.1 in 1899. At the time of the hearing steel rails were \$28.00 per ton; prior to 1893 they were \$30.00 per ton. They could have been bought about the year 1898 for as low as \$17.00 or \$18.00.

These advanced prices for railroad material and greater general cost of operation were much more than equalled in effect by the tremendous increase of traffic which set in strongly during the year 1899, and which has continued since in nearly as great, if not greater, volume. Whatever exigency for greater revenue may have appeared to the defendants to exist sometime before the advance in January, 1900, in order to reach the scale of earnings or profits which the carriers obtained prior to June 30, 1893, has since disappeared, and if the roads in Official Classification territory had made no advance in classification in January, 1900, their increased aggregate earnings or profits would, we think it is safe to say, have equalled, if not exceeded, in 1900 or 1901, those they received in the most prosperous previous year. This plainly appears from reports of mileage and earnings in the aggregate and per mile of line. The average net earnings per mile of line in this territory, groups I, II and III, for the years ending June 30, 1890, to 1898, inclusive, was \$3,539; for the yearly period in 1899 it was \$3,643; for the fiscal year ending June 30, 1900, it was \$4,217, and the classification changes had been in force only during the latter part of that year. The fiscal year of greatest net earnings prior to 1899 was 1893, when such earnings amounted, in groups I, II and III, to \$185,691,581. In 1899 they were \$192,784,813. In 1900 they were \$225,694,310. These greatly increased net earnings have resulted not alone from increased business. Economies in operation from the use of larger and heavier equipment, both cars and engines, and improved roadbeds, amounting almost to reconstruction in some instances, have been and are still being practiced, and these are permanent improvements which will continue to promote the net earnings of the carriers.

In Official Classification territory the general class rates are, 9 I. C. C. REF.

as before found, substantially the same to-day between the west and the east, and practically the same between the various percentage territories and the east, as they were in 1887 or 1890, the changes made having occurred through changes in the classification or by making, changing or canceling commodity rates. Besides the advance in carload rates hereinbefore stated the classification of January 1, 1900, also advanced a large number of less than carload articles, and there were numerous cancellations of commodity rates. Just what happened in regard to commodity rates or what commodity rates were afterward restored or otherwise given does not appear. The record does show, however, that about 818 items were advanced to higher classes in the classification on that date, that six articles were reduced, that on March 10, 1900, certain other articles, how many is not stated, were reduced from the basis fixed on January 1 of that year, that the average net advance based upon the Chicago-New York rates was 21.2 per cent, and that all these advances were made by the carriers for the purpose of securing greater revenue. Hay, with a large tonnage apparently far in excess of that furnished by any of the other advanced articles, was increased about 20 per cent.

Up to 1900, the average rate per ton per mile in the United States tended to decrease during a long series of years. There were slight increases, but the general trend was downward. For the United States the average was 9.41 mills in 1890; 8.95 mills in 1891; 8.98 mills in 1892; 8.78 mills in 1893; 8.60 mills in 1894; 8.39 mills in 1895; 8.06 mills in 1896; 7.98 mills in 1897; 7.53 mills in 1898; 7.24 mills in 1899; 7.29 mills in 1900; 7.50 mills in 1901. The same general tendency existed in Groups I, II and III, all of which are embraced in Official Classification territory. Taking the defendants together, their net earnings for 1900 were much greater than those for 1899, and their net earnings for 1901 were in excess of those for 1900. The only defendant roads showing decreased net earnings in 1901 as compared with those for 1899 were the Delaware, Lackawanna & Western, Grand Rapids & Indiana and Lehigh Valley. Using round figures, the earnings of the Baltimore & Ohio and Baltimore & Ohio Southwestern, the two roads having been consolidated, increased between those years from 8 to 15 mil-

lions, the Boston & Maine from 6 to 9 millions, Erie from 9 to 11 millions, Lake Shore from $7\frac{3}{4}$ to nearly 10 millions, New York Central from 17 to 20 millions, Pennsylvania Company from $6\frac{3}{4}$ to $8\frac{1}{2}$ millions, Pennsylvania Railroad from 21 to over $35\frac{1}{2}$ millions. Several of the others show increases of a million. For others, smaller differences are shown. The Pere Marquette, Canada Atlantic and Grand Trunk Railway of Canada are not considered in this statement of earnings because of substantial differences between reports of the Pere Marquette and its predecessor, the change occurring during the years mentioned, and because the Canada Atlantic filed no report with the Commission and reports are only filed for subsidiary lines in the Grand Trunk System.

Notwithstanding the large increases in traffic and earnings, the average rate per ton per mile was greater, and in some instances considerably greater, in 1901 than in 1899 on all the defendant lines except the Boston & Maine, Delaware, Lackawanna & Western, New York Central and New York, Chicago & St. Louis. The Baltimore & Ohio and Baltimore & Ohio Southwestern, Pere Marquette, Canada Atlantic, and Grand Trunk are not included in this statement.

Leaving out the Baltimore & Ohio Southwestern, Canada Atlantic, and Grand Trunk, all of the defendants paid interest on their funded debt, and all, including the Baltimore & Ohio, paid dividends upon common or preferred stock, or both, except the Ann Arbor, Central Vermont, Erie, Lehigh Valley, New York, Ontario & Western, Pennsylvania Co., Philadelphia & Reading, Toledo, St. Louis & Western, and Wabash. The Pennsylvania Company is allied with the Pennsylvania Railroad Company, which paid a six per cent dividend upon its stock. The number of defendant corporations reporting as having paid a dividend is 18. The Lake Shore dividends were 7 per cent on common stock and 10 per cent on preferred. The Boston & Albany paid $8\frac{3}{4}$ per cent on its stock. The New York, New Haven & Hartford paid 8 per cent, the Boston & Maine 7 per cent on common and 6 per cent on preferred, the Delaware, Lackawanna & Western 7 per cent on common stock, the Delaware & Hudson 6 per cent on common stock, the New York Central and Central of New Jersey 5 per cent on their common stock, the Canadian Pacific 5 per cent on common and 4 per

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cent on preferred, the Cleveland, Cincinnati, Chicago & St. Louis $3\frac{1}{2}$ percent on common and 5 and 6 per cent on preferred, the Baltimore & Ohio 4 per cent on common and preferred, the New York, Chicago & St. Louis 5 per cent on common and 2 per cent on preferred, the Pere Marquette 4 per cent on preferred, the Pittsburgh, Cincinnati, Chicago & St. Louis 4 per cent on preferred, and the Grand Rapids & Indiana 1 per cent on common. Compared with roads generally throughout the United States, these defendant roads are, with few exceptions, in fair to excellent financial condition, and several of the companies are extremely prosperous.

Counsel for defendants say in their brief that the dividends paid by railroads throughout the United States in 1901 (June 30), as shown by our Preliminary Report on Income Account for that fiscal year were less than for the fiscal year of 1900, and they ask why it was that with over 91 million dollars increase in gross earnings in 1901, that year resulted in less aggregate dividends than those paid in 1900. They say that if there is no mistake in the figures, it would appear that the average freight rate is so low that the railroads which can pay any dividends are decreasing in number. This statement of counsel and the argument based thereon are due to a misapprehension of the figures given in our Preliminary Report on Income Account for 1901. The dividends actually paid in that year were greater than those paid in 1900. That report was confined to returns made by operating roads. The dividends so reported amounted to \$121,108,637, as against \$108,210,652 paid in dividends by the same roads in 1900. The total dividends paid in 1900, including those of subsidiary lines, were \$139,597,972, and it is said at the end of the Preliminary Report on Income Account that if a corresponding payment of dividends by subsidiary lines be assumed for 1901, the total dividends in that year would exceed \$150,000,000. As shown in our report on Statistics of Railways, about to be issued for the year ending June 30, 1901, the total amount of dividends paid by railways in that year was \$156,735,784, an increase over 1900 of \$17,137,812.

19. The facts hereinbefore stated, taken together, warrant the further finding, and we find accordingly, that the action of defendants in advancing the classification and rates on hay

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and straw in carloads from sixth to fifth class on January 1, 1900, and their subsequent maintenance and enforcement of such advanced classification and rates resulted in undue and unreasonable prejudice and disadvantage and unjust discrimination against hay and straw and members of the complaining association, and generally against the localities, shippers and dealers participating in the production, shipment, sale, and consumption thereof; and that such action and the higher rates resulting therefrom were and are unreasonable.

CONCLUSIONS.

The record in this case consists of a great mass of testimony and exhibits, including the freight classification used in Official Classification territory, and many tables showing rates, tonnage, values, details of railway operation, earnings and traffic, and various other statistics, and as determination of the matter in issue depends upon the proper statement and decision of numerous material questions of fact, the findings herewith presented are necessarily more extended than those required in cases involving a narrower range of facts.

The advance in the classification of hay and straw on January 1, 1900, covered but two out of 818 items which were changed on that date from a lower to a higher class in the Official Classification. When notice of these impending changes was given in 1899, a large number of protests against them were filed with the Commission, and as a result a general investigation was ordered and held by the Commission on December 21 of that year. That investigation was general in character and had for its object the disclosure of the reasons which prompted the carriers to undertake such very considerable and unusual changes in freight classification and rates at that time. At such hearing, representatives of the complaining association appeared in opposition to the proposed changes. As throwing light upon the conditions then prevailing, it is not inappropriate to refer here to some passages contained in our Thirteenth and Fourteenth Annual Reports. After saying on page 6 of the Thirteenth Annual Report that it was matter of common knowledge that vast schemes of railway control were in process of consummation, and that the competition of rival lines would be restrained by these combinations, we stated that the remark-

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able increase in 1899 of the volume of railroad business had been so great, and to an extent so unexpected, that many carriers were not prepared for the unusual demands upon their facilities, that as a rule their equipment had been taxed to full capacity and often found inadequate for the service required, and that this had brought a substantial addition to the gross and net revenues of nearly every railroad in the country and greatly reduced the number of railway failures. We then referred in that report to the changes in the Official Classification, which were about to become effective, as follows:

"Coincident with these schemes of unified control, and while this exceptional movement of traffic continues, the carriers operating throughout an extensive and important territory have recently made substantial, and in many cases very large, increases in their scale of charges. These advances in rates have been mainly effected by concerted and agreed changes in the classification of freight articles by roads, both connecting and competing, which use the same classification and make the same a part of the tariffs filed by them under the law. Numerous articles have been taken from the class in which they were formerly placed and put in a higher class, to which a higher rate is applied, and many articles heretofore on the commodity list have been included in the classified traffic with the result of materially increasing the charges imposed thereon. Advances of rates in this manner have been made on hundreds of articles, many of which are necessities in general use and constantly moving from place to place in the process of distribution."

In our Fourteenth Annual Report (1900), we discussed at some length these Official Classification changes and the results of the general investigation thereof in December, 1899. In regard to the question of greater revenue the Commission stated (page 17) that the "railway witnesses all agreed in this, that the moving and only purpose in the greater part of these changes was to obtain more revenue by advancing rates. There were two ways, they said, in which this could be accomplished: first, by increasing the rate *eo nomine*; second, by changing the classification, and the latter course was adopted." And in the same connection the following appears on page 18: "Of course it is impossible to say what effect these advances in rate, which

prevailed during the last half of the year 1900, may have had upon the result for the entire year, but when it is considered that gross receipts, and, therefore, net revenues, enormously increased during that year, it is evident that there is little in the claim that increased cost of operation justified these advances in rates."

Those statements in the annual reports of the Commission above mentioned are not contradicted by the evidence in this case. On the contrary, the facts found herein tend strongly to confirm the views there expressed in regard to defendants' need of further revenue. The action of defendants in changing rates by means of advancing a large number of freight articles in the classification was taken at a time when, notwithstanding increased prices of railroad material and some additional cost of operation, an unprecedented volume of trade and railroad traffic had become established, when there were no indications that such commercial prosperity would not continue for an indefinite period, and after they had successfully inaugurated and adopted operating economies, through the use of larger and heavier equipment and improvement of roadbeds, which served to decrease the percentage cost of operation. The evidence abundantly proves that they were not then nor at any subsequent period in any such financial condition as to call for the large advances which were made by them, through concerted action, to apply throughout the whole length and breadth of Official Classification territory. Some of the companies were and are in much better condition than others, but the action under consideration was taken by all and intended to have beneficial effect upon all through the increased profits accruing from general rate advances upon a great number of classified articles, including hay and straw.

Carriers are entitled under the Act to regulate commerce to determine for themselves what are proper rates in the first instance; but when they, as in this case, make numerous rate advances under the circumstances above shown, they cannot successfully plead the excuse of financial necessity in cases where the legality of such action as applied to any given commodity is challenged. The controlling question in such cases must be as to the reasonableness and justice of the particular I. C. C. REP.

ular advance in classification and rate upon the facts shown in each case.

If it be assumed, however, that some valid reasons existed for increased revenues to the defendants, we are nevertheless dealing with a case where the relation of rates as between hay and straw and other commodities is a chief matter for consideration, and this involves the recognized legal duty of the carriers to so classify traffic and fix charges thereon that the burdens of transportation shall be reasonably and justly distributed among the articles they carry. *Page v. Delaware, L. & W. R. Co.* 6 I. C. C. Rep. 148, 4 Inters. Com. Rep. 525; *Myer v. Cleveland, C. C. & St. L. Ry. Co.* 9 I. C. C. Rep. 78. That is the governing principle of a freight classification, and it arises under the obligation imposed upon carriers by the statute not to charge unreasonable or unjust rates or to impose any unjust discrimination or undue prejudice in any respect whatsoever. It is evident therefore that even in cases where the need of additional revenue is apparent the carrier cannot arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation.

If the defendant carriers had advanced all of their class rates, in case of complaint against the increased rate upon any particular article the reasonableness of such higher charge might well have been the principal question; but what these defendants did on January 1, 1900, was to increase the classification rating and consequently the rates upon numerous commodities selected by them from the classification, including hay and straw, and by such action they laid themselves open to the additional charge of having subjected such higher rated traffic and those interested in it to undue prejudice and unjust discrimination.

Proceeding now to the particular questions in this case, the first point for consideration is whether the advance in the classification and rates on hay and straw was reasonable. Hay and straw were always sixth class in the Official Classification, with a minimum of 20,000 pounds per carload up to January 1, 1890, with the exception of a few weeks in the early part of 1894, during which short period they were in fifth class with a minimum of 15,000 pounds; and while there is evidence show-

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ing that prior to 1894 shippers were unable to load the prescribed 20,000 pounds minimum into many of the cars then in use, that difficulty disappeared with the introduction of cars having greater capacity. To what extent the carriers were unable to supply suitable cars for loading 20,000 pounds of hay prior to 1894 does not appear, but the fact that they did not reduce the minimum carload between the years 1887 and 1894 indicates that even at that time the inability to load the required amount may have been confined to the older car equipment. In *Suffern, Hunt & Co. v. Indiana, D. & W. R. Co.* 7 I. C. C. Rep. 282, we said, speaking of minimum carload weights for grain, that it would manifestly be unjust, under any rule as to minimum loads or otherwise, to charge for weight not carried in a car which the carrier has furnished and in which on account of its size and the nature and bulk of the freight the required minimum cannot be loaded. There may of course be some exceptions to such a rule in cases where the freight is extremely light in weight in comparison with its bulk, and of such character as to forbid close packing, but it has proper application to general freight which is usually capable of being shipped in bulk or in bales or boxes.

The defendant carriers by keeping hay and straw in the sixth class and charging sixth class rates thereon for thirteen years or more, with the exception of the short period in 1894, were furnishing evidence that such classification and rates were reasonably high, and while the continuance of such classification and rates is not conclusive evidence of their reasonableness, it is in the nature of an admission against them which tends to show the unreasonableness of the advance of hay and straw to fifth class rates in January, 1900, and the force of this admission becomes great in view of the largely increased business and profits of the defendants in 1899 and subsequent years. Our ruling in *Holmes v. Southern Ry. Co.* 8 I. C. C. Rep. 561, decided in 1900, was to the same effect.

In 1891 we held, in *Florida R. Co. v. Savannah, F. & W. Ry.* 5 I. C. C. Rep. 13, 3 Inters. Com. Rep. 688, that "carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing and the advance is great and the traffic affected is of large and constantly increas-

ing volume and of vital importance to a large section of country."

Hay is a staple food article of a kind known as raw agricultural product which is grown, shipped and consumed in all sections of Official Classification territory, and which furnishes the carriers in that territory with a steady and large volume of yearly tonnage. The traffic so provided by shipments of hay is profitable to these carriers at sixth class rates. Some other kinds of traffic furnish the defendants greater revenue per car at sixth class or even less rates, but, on the other hand, giving due weight to the large volume of hay, comparatively few articles furnish them with greater aggregate revenue. Straw, it is conceded, should be classified and rated the same as hay. One of the conclusions announced by the Commission in the Food Products Investigation of 1890 (4 I. C. C. Rep. 48, 3 Inters. Com. Rep. 93), has direct bearing in this case: "In the carriage of great staples, which supply an enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable." The carriers claim that hay costs them more to handle and transport than most other articles in either the fifth or sixth classes. Taking the traffic as a whole, we cannot sustain that contention, but if that should be the fact, the character, value, volume and use of this commodity are such as to require relatively low charges for its carriage.

The findings indicate that the advanced rates operated in some degree to divert shipments from parts of the Middle West to other than eastern destinations. Moreover, the cost of transportation to the shipper of hay from the Middle West to New York and other large eastern markets constitutes a large proportion of its value in such markets, and when added to the cost of baling and sale, the total approximates or largely exceeds the price realized by the producer. These increased rates added to the cost of hay and straw to consumers or diminished the price to the producer, or both, and prejudiced in some degree the business of the middleman, but the extent to which either of these classes has been injuriously affected by the advanced rates was not, and apparently could not, be shown. The advance in transportation cost is shown in the findings, and that

greater cost is an additional burden placed upon those concerned in the production, sale, and consumption of hay and straw.

The effect of the advance in hay rates from American shipping points to New England and parts of the State of New York as compared with shipments from Canada to the same New England and New York points is fully stated in the findings. That advance interfered with a long-standing relation of charges from the two producing sections which operated to give an advantage to Canadian hay compared with the pre-existing situation, and such change in a long-existing rate adjustment was in favor of a producing section in an adjacent foreign country from which hay shipments into the United States are required by law to pay a duty as great as \$4.00 per ton.

The question of the reasonableness of the hay rates in this case also depends in large measure upon the relation of hay as a transportation commodity to other articles carried by the defendant companies, and it is this phase of the controversy, the proper classification of hay, and of straw likewise, to which the greater part of the record applies. This branch of the case, as before stated, involved the question of unlawful discrimination or prejudice.

The making of railroad tariffs is simplified by classifying the great number of articles commonly offered for transportation and fixing rates for the different classes instead of making a separate rate for each commodity. In a classification such as the Official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in the elements of character, use, value, volume, bulk, weight, risk and expense of handling, which have so often been referred to as governing conditions in freight classification. Besides these general considerations affecting classification, competition is often an important factor. Such competition includes not only that between carriers, but also that of a commodity produced in one section with the same commodity produced in another section, and sometimes the competition of one kind of traffic with another.

Necessarily many articles must appear together in a class which bear little relation to each other in all of these respects, though some may be of like character while differing in

bulk or in value, others have similar bulk while varying largely as to weight or volume, and still others present similarity in one or more of the elements mentioned, but have no common relation as to others. The best that can be done under such a scheme of classification is to place two or more articles possessing general similarity in the same class, and where an article is not analogous to any other to put that article in the class containing commodities which are most nearly related to it in general character and other essential respects.

As shown by the findings, hay, in the elements of character, use, value and volume, corresponds more nearly with articles taking sixth class or lower commodity rates than with those in fifth class. In the Southern and Western Classifications hay is classed with grain in the first, and even lower than grain in the second, though in the territory of the latter both hay and grain take commodity rates. Its value is low as compared with that of articles generally in defendants' fifth class.

As a raw agricultural product used for stock feeding it comes in competition to a certain extent with various kinds of grain and mill products, all of which, though nominally kept in the sixth class by the defendants, take commodity rates far below the rates named for that class. Even the finer and much more expensive kinds of grain products take the commodity rates provided for grain and ordinary grain products. Of the other food articles which now take fifth class rates under defendants' classification nearly all have greater value than hay, and with few exceptions are merchandise or grocery articles, used as food for man, and, as a rule, sold at retail to consumers in small quantities. Many wooden articles in the rough, though classed as sixth class with lumber, are given such commodity rates as are applied by defendants upon lumber, yet hay, a coarse food product, is rated higher than any other kind of staple food except potatoes and higher than many of the finer kinds of food products. The list of other carload articles advanced by defendants from sixth to fifth class and not afterwards restored by them to sixth class, and which is given in the tenth finding, contains no article which is comparable with hay in either character, volume of the traffic, value, or use in any striking sense. We are also unable to discover any single article actually taking fifth or sixth class rates over the defendant lines which fur-

nishes them with an aggregate tonnage equal to that of hay. Apparently all commodities which come to the defendant carriers in an aggregate volume equal to or exceeding that of hay are given commodity rates. The tonnage of hay originating in Official Classification territory is greater than that of any other product of agriculture except grain, and fruits and vegetables, both of which terms include a number of distinct products.

A contention strongly urged by the defendants is based upon the greater bulk and less weight of hay as compared with grain and various other commodities. The points of dissimilarity as between hay and grain and some other articles are fully noted in the findings. Grain loads so much heavier per car than hay does that when transported between two given points at present rates, hay gives the carriers less revenue per car; but the findings furnish a useful illustration, based upon the Lake Shore traffic for a period of nine months, which indicates that taking all the hay as it is received by the carrier at many different points and carried over varying distances to numerous destinations, and taking all the grain traffic in the same way, the revenue per car per mile was greater for the Lake Shore and Michigan Southern, and possibly greater for other defendant lines, upon hay than upon grain. The record does not show what the actual fact was as to the other defendant roads, and it is to be regretted that similar complete tables were not furnished for those lines. Several of them did furnish statistics showing the number of cars, tonnage per car and average revenue per car, but without the average distance haul for each of the commodities compared they were obviously defective. A car of hay may yield greater revenue per car per mile than a car containing some other commodity because of its carriage over a shorter distance at a higher rate, and a car of grain, though carried a longer distance, may yield less revenue per mile than a car of hay because of its transportation at a much lower rate. It does not follow, therefore, that the difference between the revenues per car afforded by hay and some other commodity when shipped between specified points will be maintained as to all traffic in both articles, the local carried at local rates as well as the through traffic over joint lines carried by each at a share of the through rate. The rate per car per mile between two given

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points may, for example, be greater upon grain than upon hay, but the average rate per car per mile, which includes all traffic in the commodities compared, may at the same time be nearly as great upon hay as upon grain, or it may even be greater upon hay than upon grain.

Nevertheless, in view of the usual practice of loading grain to the capacity of the car and the greater bulk as compared to weight of hay, which limits the loading of that commodity as a rule to a small excess above the prescribed minimum, and the probability that hay is handled by the carrier at some greater cost than it handles grain, we think, upon the whole, that from the standpoint of the carrier hay as an article of traffic is somewhat less profitable than grain. But rates cannot be adjusted in exact mathematical relation. Though hay may be less desirable than grain as an article of traffic, it is vastly more profitable to the carriers, considering its greater volume and the certainty of large quantities seeking transportation each year, than many, if not all, other commodities taking fifth or even sixth class rates over the defendant lines.

Some claim was made on behalf of defendants that with hay at fifth class rates the carriers would be more likely to promptly furnish cars for its movement than they would be in case of its restoration to the sixth class. If, as matter of justice, hay should take sixth instead of fifth class rates, the furnishing of a fair proportion of cars for its transportation at such rates becomes a legal duty devolving upon the carriers which they would not be at liberty to disregard.

After giving full and careful consideration to all of the facts and circumstances, and the arguments of counsel in this case, we are of the opinion that the defendants are mistaken in believing that hay and straw were improperly classified and carried by them as sixth class freight, and that their action on January 1, 1900, whereby those commodities were raised to fifth class and thereafter charged fifth class rates was unreasonable and unjust, and resulted in unlawful discrimination and prejudice against hay and straw, localities in Official Classification territory wherein those commodities are produced, and against producers, shippers, dealers, and consumers of such articles in that section of the country. An order in conformity with these conclusions will be entered and served.

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THE DIAMOND MILLS
v.
BOSTON AND MAINE RAILROAD COMPANY.

Decided November 17, 1902.

1. Shippers are not entitled as matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; on the contrary, milling in transit is a special privilege for which extra compensation is usually exacted by carriers and which is only permitted by them under prescribed terms and conditions.
2. At common law, and under the Act to regulate commerce as interpreted by the courts, joint through routes and through rates are matters of contract between the connecting carriers, and the defendant, as party to a joint tariff which does not give shippers the privilege of milling in transit, acted within its legal right in notifying its immediate connections and the complainant that it would not permit that practice.
3. Complainant brings grain from western points to Buffalo, N. Y., where it is milled, and ships the product to points on defendant's line in New England. The through tariff rates on grain and grain products from the points of origin to the New England points of destination are the same, but no right of milling in transit is granted in the joint tariff. Under a regulation of the Lake Shore Company, one of the parties to the tariff, and on whose line complainant's mill is located, milling in transit is permitted under a penalty of 1½ cents per 100 pounds above the rate on grain, but defendant does not join in granting that privilege to shippers from western points to points on its line in New England, and when grain so milled in transit is received by defendant it imposes an arbitrary charge of 6 cents per 100 pounds. The sum of the rate on separate shipments of grain from the west to Buffalo and the established joint rate of 12 cents per 100 pounds on grain products from Buffalo to points on defendant's line is less than the through grain rate added to the defendant's 6-cent arbitrary:

Held (1) That defendant has acted unlawfully in imposing the arbitrary charge of 6 cents per 100 pounds in addition to the through grain rate on complainant's milled products forwarded from Buffalo, and that it was and is bound to apply on such transportation from

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Buffalo its established joint rate on grain products from that point to New England destinations. (2) That complainant is entitled to reparation in the sum of \$358.81, the difference between charges exacted from it on the basis of the 6-cent arbitrary added to the through grain rate and the sum of established rates on grain to and on milled products from Buffalo.

J. H. Metcalf for complainant.

Edgar J. Rich for Boston & Maine R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

The complainant operates a mill in the city of Buffalo, New York, at which it grinds corn, mainly, and other grains to some extent, for feed. Its supply is obtained in the west and its product marketed in Buffalo and the east. The Treasurer of the complainant testified that about 20 per cent was sold in Buffalo, the balance in New York, Pennsylvania and New England.

The defendant is one of several railroads forming a through line from the western grain fields to New England points, and it joins in a through tariff for the transportation of grain and the products of grain between these points, the rate named being the same upon grain and grain products. The tariff under which it was operating during the period in question contains no reference to milling in transit.

The Lake Shore & Michigan Southern Railway, one of the railroads forming a link in this through line, publishes a tariff, by which milling in transit is allowed at stations on its road. This tariff is local, not participated in by any other railroad, and provides that grain shipped from one station upon its line to another station east thereof to be milled in transit may be ground and sent forward to destination at the through rate from the point of origin to the point of final destination, plus 1½ cents per 100 pounds to be paid for the privilege. This tariff allows this right upon certain specified conditions, which need not be referred to here in detail. It may be noticed, in passing, that the substitution of one kind of grain, or its product, for another, is not permitted; thus, if wheat is shipped in, meal can-

not be shipped out. The mill of the complainant is situated upon the line of the Lake Shore & Michigan Southern Railway, and the complainant seeks to take advantage of this milling in transit privilege in shipping grain from the point of origin to Buffalo, and then distributing the product to the east.

The ordinary method followed by the complainant is this: The grain is shipped to Buffalo at the full local rate; when the product is shipped out a bill of lading is issued correcting the rate so that the total rate paid is that applicable from the point of origin to the point of destination, plus the milling in transit penalty. During a part of the time covered by these shipments, and perhaps all the time, the rate from Chicago to Boston, upon grain and grain products was 19½ cents, the local rate from Chicago to Buffalo being 11 cents, and from Buffalo to Boston 12 cents. If, therefore, the complainant paid the local rate to Buffalo and the local rate from Buffalo, the entire transportation charge would be 23 cents, while if it obtained the advantage of the through rate, with the addition of the 1½ cents milling in transit penalty, the entire rate would be 21 cents, a saving of 2 cents a hundred pounds. The Treasurer of the complainant testified that \$1.00 a ton was regarded as a fair profit in the business, and that if obliged to pay in all cases the local rate in and out, his company could not cover over 20 per cent of the territory in which it now operates.

The defendant declines to permit milling in transit upon this through rate. It has so notified its immediate connections, of which, however, the Lake Shore & Michigan Southern is not one, and has given notice to the complainant to the same effect. To prevent this it imposes an arbitrary charge of 6 cents per hundred pounds on all grain products attempted to be shipped into its territory under the through rate, which have been milled in transit. It appears probable from the testimony that in point of fact considerable quantities of grain products are shipped to New England points over the Boston & Maine which have been ground in transit, but so far as that company can ascertain, it imposes the arbitrary as above.

The complainant introduced a list of 34 carloads, 9 of 40,000 pounds per car and 25 of 30,000 pounds per car, upon which this terminal charge had been exacted, amounting in all to 9 I. C. C. REP.

\$666.00, and claimed to recover the same as damages in this proceeding. We find that this amount of arbitrary has been imposed by the defendant upon that number of carload shipments and that the complainant was obliged to pay the same in order to obtain a delivery of its freight.

The defendant receives this traffic usually at Rotterdam Junction. Its testimony shows that upon the basis of the 19½-cent rate the division to lines east of Buffalo is 9.3 cents and its own division east of Rotterdam Junction 4.03 cents. The rate from Buffalo to New England points is 12 cents, and the rate from Rotterdam Junction is the same. The defendant claims the right to exact its local rate from that point, and inasmuch as its division plus the 6-cent arbitrary is less than such local rate, it claims that the complainant has not been injured in this case. The 6-cent arbitrary, added to the division of lines east of Buffalo, 9.3 cents, would make a rate of 15.3 cents collected by the defendant for the service from Buffalo to destination, while the rate in effect during most of the time covered by the shipment of these cars was 12 cents, an overcharge. If 12 cents was the proper rate, of 3.3 cents per hundred pounds. But the rate from Chicago was not 19½ cents, nor was the rate from Buffalo 12 cents during the entire period covered by these shipments. The defendant put into the case way-bills embracing 22 of the 34 cars, and these contained the actual divisions. An examination of them shows that most of the carloads originated at points taking a rate somewhat less than the Chicago rate, and that in this case the division of the lines east of Buffalo was somewhat less than that above mentioned. By putting together these way-bills and the expense bills for all the carloads introduced by the complainant, and consulting our files for the rate actually in effect at the date of the various shipments, we are able to determine by how much the amount collected on account of transportation east of Buffalo exceeds what would have been collected had the tariff rate from that point been applied, to which the defendant was a party, and that amount is \$358.81.

CONCLUSIONS.

The complainant claims that the defendant should be com-
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pelled to apply the through rate on shipments of feed ground in transit. The question is one of considerable pecuniary importance to the complainant, since if all lines east of Buffalo were to adopt the rule enforced by this defendant, it would seriously injure the business of the complainant.

It appears that this grain originated at various points in the west, and was delivered at various points in New England, but for the purposes of this statement, it may be assumed that the point of origin was Chicago and the point of delivery Boston. If a single railroad extended from Chicago to Boston, and that railroad published a rate like the present on corn, and the same rate on meal, would it be claimed that the shipper might, as a matter of right, stop a carload of corn at an intermediate point, grind it and send it on to destination at the through rate? Certainly not. It is universally understood that the right of milling in transit is a special privilege for which extra compensation is usually exacted, and which is only permitted under certain terms and conditions. The question therefore reduces itself to this: Must the Boston & Maine Railroad recognize the private arrangement which exists between this complainant and the Lake Shore & Michigan Southern Railway, in virtue of which the complainant, for a certain sum paid that company, is allowed to mill its corn in transit?

The line between Chicago and Boston is composed of several different railroads, which have united to form a through route and to establish a through rate. At common law no obligation rested upon carriers to form such routes. Their formation was matter of contract, and each carrier was free to enter into the contract or not, as it elected; nor has this rule been changed by the enactment of the Act to regulate commerce. *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.* 2 Inters. Com. Rep. 351, 2 L. R. A. 289, 37 Fed. 567; *Oregon Short Line & U. N. R. Co. v. Northern P. R. Co.* 4 Inters. Com. Rep. 249, 51 Fed. 465; *Little Rock & M. R. Co. v. St. Louis S. W. R. Co.* 4 Inters. Com. Rep. 854, 26 L. R. A. 192, 11 C. C. A. 417, 27 U. S. App. 380, 63 Fed. 775.

If now the establishment of this through line and through rate is a matter of contract between the different railroads composing it, it seems clear that the Boston & Maine Railroad may

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decline to become a party to that arrangement unless the terms and conditions are satisfactory to it. There is nothing in the joint tariff which gives the right of transit milling. The defendant has notified its immediate connections that it will not permit that practice, and it has notified the complainant to the same effect. We think that in so doing it is within its legal right, and that this Commission has no power to direct otherwise.

This must not be construed as a condemnation of milling in transit. The fundamental idea involved is very generally recognized in railway operation, as in the reconsignment privileges accorded to many commodities, the milling of grain, the dressing of lumber, the floating of cotton, etc. The Commission has approved the latter practice in 8 I. C. C. Rep. 121, and doubtless in many instances the application of the principle is of great benefit to the public. A complete system of interstate railway regulation would probably give the regulating body authority to determine when privileges of this kind should be accorded, and upon what terms, for they all enter into and are really a part of the rate; but no such authority is conferred upon this Commission by the present Act. Still less should it be understood that railway companies can in the granting of this and similar privileges discriminate unduly between shippers, localities or commodities. The record before us shows no such discrimination.

The defendant imposed on these shippers an arbitrary of 6 cents per 100 pounds in addition to the through rate. It receives this traffic from its connections at Rotterdam Junction, New York. The local rate from that point to Boston is 12 cents; its division of the through rate 4.03 cents. Its theory is that since this traffic comes to it under false pretenses, it may entirely repudiate the contract of shipment, charging the local rate from Rotterdam Junction. Since this division, plus the arbitrary, amounts to less than what the local rate would have been, the complainant is not injured.

We cannot accept this view of the defendant. There was in effect a joint rate, to which the defendant was a party, of 12 cents per 100 pounds from Buffalo to Boston. This traffic in fact originated at Buffalo and moved from that point. It must

be treated as having moved under this established rate. The defendant cannot, certainly, in the absence of some statement to that effect in its schedules, impose an arbitrary charge for some fancied delinquency upon the part either of the shippers or of its connections. It must apply the established tariff. Whatever the defendant has collected east of Buffalo over and above the established rate must be refunded, and this amount is \$338.81. An order will issue requiring the defendant to pay to the complainant this amount on or before January 1, 1903.

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THE BUSINESS MEN'S LEAGUE OF ST. LOUIS

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE COLORADO MIDLAND RAILWAY COMPANY; THE DENVER & RIO GRANDE RAILROAD COMPANY; THE GREAT NORTHERN RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE NORTHERN PACIFIC RAILWAY COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON & CALIFORNIA RAILROAD COMPANY; THE RIO GRANDE WESTERN RAILWAY COMPANY; THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; THE SANTA FE PACIFIC RAILROAD COMPANY; THE SOUTHERN CALIFORNIA RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY (ATLANTIC SYSTEM); THE SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM); THE TEXAS & PACIFIC RAILWAY COMPANY; and THE UNION PACIFIC RAILROAD COMPANY.

HIBBARD, SPENCER, BARTLETT & CO., REID, MURDOCH & CO., SPRAGUE, WARNER & CO., FRANKLIN McVEAGH & CO., KELLY, MAUS & CO., and S. D. KIMBARK; THE MERCHANTS' & MANUFACTURERS' ASSOCIATION OF MILWAUKEE; THE KANSAS CITY TRANSPORTATION BUREAU OF KANSAS CITY, MO.; THE COMMERCIAL CLUB OF ST. JOSEPH, MO.; THE DULUTH CHAMBER OF COMMERCE OF DULUTH, MINN.; and THE SANTA ANA, CAL., CHAMBER OF COMMERCE, INTERVENERS ON BEHALF OF COMPLAINANT.

THE PACIFIC COAST JOBBERS' AND MANUFACTURERS' ASSOCIATION, INTERVENER ON BEHALF OF DEFENDANTS.

Decided November 17, 1902.

1. With water competition compelling low all-rail freight rates from
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New York to San Francisco and other Pacific Coast terminals, a showing that the distance is less and that graded rates were formerly in force is not sufficient to warrant an order requiring lower rates from St. Louis, Chicago and other interior points than from New York on traffic carried by rail to Pacific Coast destinations.

2. The differences between carload and less than carload rates from St. Louis, Chicago and other points in the Middle West to Pacific Coast territory, which are the subject of complaint herein, and which average about 50 cents per 100 pounds, are not, taking the rate adjustment as a whole, and giving due consideration to the controlling force of water competition between the eastern seaboard and the Pacific Coast, difference in the cost of service by rail, the interests of the parties, preservation of reasonable competition between the Middle West and the Pacific Coast jobbers, and other material circumstances, shown to be unjust; but while the tariff cannot be condemned as a whole upon grounds urged by complainants, many of the details in such tariff are in violation of law.
3. The commodity tariff applying on traffic from the Middle West to Pacific Coast territory names rates upon over 400 commodities in carloads only, leaving the movement of these commodities in less than carloads to be governed by the greatly higher class rate provided for such shipments and producing a differential as between carload and less than carload quantities which, even under the peculiar circumstances of this traffic, is in many cases excessive where there is any general movement in less than carloads or other commercial reason for a corresponding less than carload rate; and the tariff is also to some extent unlawful in that it specifies a number of varied commodity rates, especially for the hardware schedule, and unduly prevents in some instances the shipment of articles of the same class in mixed carloads at carload rates.
4. In the adjustment of carload and less than carload rates circumstances often render the application of a greater differential proper in one case than in another, but taking the traffic generally from the Middle West to Pacific Coast territory, it is held that a differential as between carloads and less than carloads which is at once more than 50 cents per 100 pounds and more than 50 per cent of the carload rate is *prima facie* excessive. It does not follow that every differential may equal this or that every differential which exceeds this is unlawful, but any differential in excess of this requires special justification.
5. While on traffic from the Middle West to the Pacific Coast many differentials in the rates named for carloads and less than carloads are too great, while varied commodity rates in the hardware schedule and perhaps in some others should be readjusted, and while in some instances greater latitude should be given in the shipment of practically the same articles in mixed carloads, the present record, which pertains almost wholly to the general aspects of the controversy, fur-

nishes no facts from which it can be intelligently determined what ought to be done in specific instances, and further hearing is accordingly ordered.

6. The question whether on traffic from the Middle West the present rates to intermediate points which are higher than those to Pacific Coast terminals are lawful was not litigated at the hearing, and while the Commission will not of its own motion proceed in that branch of the case complainants are granted leave to do so if they desire.

Orr, Christie & Bates and C. A. Parker for complainant.

Gardiner Lathrop, C. N. Sterry and H. J. Stevens for A. T. & S. F. Ry. Co.

M. D. Grover for Great Northern Ry. Co.

James Hagerman and J. M. Bryson for Mo., Kans. & Tex. Ry. Co.

Alex. G. Cochran and M. L. Clardy for Mo. Pac. Ry. Co. and St. L., I. M. & S. Ry. Co.

C. W. Bunn for Nor. Pac. Ry. Co.

W. W. Cotton for Ore. R. R. & N. Co.

W. R. Kelly for U. P. R. R. Co.

P. L. Williams and W. R. Kelly for the Ore. Short Line R. R. Co.

W. F. Herrin and Britton & Gray for So. Pac. Co. (Pacific System).

R. S. Lovett for So. Pac. Co. (Atlantic System).

O. M. Spencer for Burlington & Mo. Riv. R. R. Co. in Neb. and Denver & R. G. R. R. Co.

T. J. Freeman for Tex. & Pac. Ry. Co.

Robert Mather for C. R. I. & P. Ry. Co.

E. S. Pillsbury for Pacific Coast Jobbers' & Manufacturers' Association.

W. J. Calhoun and J. J. Wait for Hibbard, Spencer, Bartlett & Co., Reid, Murdoch & Co., Sprague, Warner & Co., Franklin McVeagh & Co., Kelly, Maus & Co. and S. D. Kimbark.

W. P. Trickett for Kansas City Transportation Bureau.

F. W. Maxwell for Commercial Club of St. Joseph, Mo.

W. A. Harris for Santa Ana Chamber of Commerce.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

The Business Men's League of St. Louis, the complainant in this proceeding, is an incorporated body whose membership represents some two thousand persons, firms and corporations engaged in business in St. Louis and that vicinity. The complaint is that the defendant carriers unjustly discriminate by their tariff rates against St. Louis and other jobbing houses of the middle west, and it is alleged that this discrimination is effected in the following ways:

1. By making a lower rate to Pacific Coast terminals than to points upon the coast which are farther east, and through which traffic must pass in reaching the terminal points.

2. By making a blanket rate from all territory east of the Missouri River to Pacific Coast destinations.

3. By undue and unreasonable differences between carload and less than carload rates, by an unjust system of varied commodity rates, and by unreasonably refusing to permit shipment of mixed carloads.

The defendants are all engaged in interstate commerce and subject to the jurisdiction of the Act. Certain of them have made answer that they are merely intermediate links in through lines between the east and west having no real voice in the making of these rates in either direction. Those defendants who assume responsibility for the rates in controversy deny that such rates are in violation of the Act to regulate commerce, for the reason that whatever discrimination or incongruity may exist is justified by the circumstances and conditions under which the traffic is transported, the most important element being water competition between the Atlantic and Pacific Coasts.

Certain jobbing firms of the city of Chicago and certain mercantile associations of the middle west asked leave and were allowed to intervene in favor of the complainant, while the Pacific Coast Jobbers & Manufacturers' Association and certain other commercial organizations of the Pacific Coast intervened in behalf of the defendants. The burden of the complaint was mainly sustained by the jobbing interests of St. Louis and Chicago; that of the defense by the Southern Pacific Company and

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the Pacific Coast jobbers. A large amount of testimony was taken, covering more than three thousand typewritten pages, and a great number of exhibits were introduced. The case was argued orally for several days and elaborate briefs were submitted. It would be almost impossible to refer in detail to all the controverted issues; nor does this seem necessary. While the disposition of the case may be doubtful the controlling questions of fact are neither numerous nor complicated.

The complaint puts in issue the system of rate-making between the territory east of the Missouri River and Pacific Coast points; and in order to understand the questions raised it is necessary to state briefly what that system is. Only west bound rates are involved.

Certain points upon the Pacific Coast, of which Los Angeles, San Francisco and Portland may be taken as illustrative examples, are designated as "Pacific Coast terminals," and rates to these points are known as "terminal rates." There are "terminal class rates," the western classification being used. There are also "terminal commodity rates," and the great bulk of the traffic moves under such latter rates, over two thousand articles being named. Both class and commodity terminal rates are the same from a given eastern point to all Pacific Coast terminals.

Stations upon the direct line by which traffic from the east reaches a terminal are called "intermediate" points. Rates to such points are made by adding to the terminal rate the local rate from the terminal back to such intermediate point, whether the rate in question be class or commodity. Thus, Reno, Nevada, is upon the main line of the Central Pacific, 155 miles east of Sacramento, California, a terminal. The terminal rate on zinc slab from Chicago to Sacramento is, C. L. \$.80; L. C. L. \$1.10. The local rate from Sacramento to Reno is C. L. \$.78, L. C. L. \$.87, making the rate from Chicago to Reno, C. L. \$1.58, L. C. L. \$1.98.

Class rates are named to intermediate points which serve as maxima to those points; i. e., when the intermediate rate is less than the terminal plus the local back, the lower rate prevails. As an illustration of this we may take the rate on sheet zinc from Chicago to Reno. The terminal rate

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is higher than on zinc slab, being C. L. \$1.25 and L. C. L. \$1.75. Adding the local back from Sacramento we have a rate of C. L. \$2.03; L. C. L. \$2.62. But sheet zinc in less than carloads under the western classification is 4th class, and in carloads 5th class; the intermediate class rates from Chicago to Reno are 4th class, \$2.10 and 5th class \$1.85. These rates apply as maxima, and therefore the rate on sheet zinc from Chicago to Reno is C. L. \$1.85 and L. C. L. \$2.10. The rate on zinc slab, which takes the same classification as sheet zinc, but a lower terminal rate, is made by the combination, while that on sheet zinc is limited by the intermediate class rate. There are also a few intermediate commodity rates which apply as maxima, and have the same effect in establishing the point to which the combination of the terminal and local back will apply.

It will be seen that under this system of rate-making the rate upon the Pacific Coast increases as we proceed farther east, or as the distance decreases, until limited by the intermediate class or commodity rate. Rates are uniformly higher at the nearer intermediate point through which the traffic passes than at the more distant terminal. This was attacked in the complaint as obnoxious to the 3d and 4th sections of the Act to regulate commerce. Upon the trial, however, the complainants did not insist upon this point, and the facts would not have been referred to here had not some statement of them been necessary to render intelligible the remainder of the case.

The complaint also attacked the method of rate making from territory east of the Missouri River to the Pacific Coast, and this point was earnestly pressed by the complainants. At the present time these rates are made upon what is known as the blanket system; that is, rates from all that territory are the same. The first class rate for instance from St. Louis to San Francisco is \$3 per hundred pounds and the same rate obtains from New York. This is true of all classes, except that class E takes a rate 5 cents lower from the Mississippi River than from points east, and another 5 cents lower from the Missouri River than from the Mississippi, and that the 5th class and class D are each 5 cents lower from the Missouri than from the Mississippi and points east. Commodity rates follow the same rule, and in general it may be stated that, subject to the excep-

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tion in class rates above named and to certain exceptions in commodity rates, which need not be referred to in detail, all common points east of the Missouri River take the same rate to Pacific Coast terminals, and to those points which base upon Pacific Coast terminals. This so-called blanket system of rate making is vigorously attacked by the complainants, who insist that what are termed "graded" rates should obtain; that is, that the rate should increase toward the Atlantic seaboard; and as one reason for this, it is asserted that such graded rates were until recently in effect.

There is no means of determining exactly what these rates were previous to 1887, when carriers were first required by law to publish and file their tariffs. An examination of the first transcontinental tariff filed with the Commission shows that graded rates were then in effect. By that tariff the first class rate was, from the Missouri River \$4, from the Mississippi \$4.50, from Chicago points \$4.70; while east of Chicago rates were apparently made by combination upon Chicago. This tariff seems to have been in the nature of an experiment, and very frequent changes were made between that date and January 1, 1889, when a tariff was put into effect which continued substantially the same, so far at least as these gradations were concerned, down to 1894. By this tariff the following differentials or grades were made: from the Missouri to the Mississippi 20 cents; from the Mississippi to Chicago 20 cents; from Chicago to Cincinnati 5 cents; from Cincinnati to Pittsburg 5 cents; and from Pittsburg to New York 20 cents. Under west bound tariff No. T 1, effective April 11, 1893, which continued in effect until the rate war of 1894, the first class rate was as follows: From the Missouri River \$3; from the Mississippi \$3.20; from Chicago \$3.40; from Cincinnati \$3.45; from Pittsburg \$3.50, and from New York \$3.70. The same principle was applied to commodity rates. Although in many cases the grade was slight, and in some few cases was not perhaps made at all, previous to 1894 the principle of graded rates was uniformly recognized in transcontinental tariffs.

In the beginning of that year, owing to conditions which will be hereafter detailed, a transcontinental rate war occurred which lasted actively for two years, and the effects of which

continued for sometime afterwards. One of the first results of this disturbance was to abolish the graded rate; first as far east as Chicago, and later all the way to the Atlantic coast. Under the tariff of June 25, 1898, which is said to have restored trans-continental rates to a normal condition, this blanket system was retained.

The contention of the complainants in this respect is in favor of the middle west as against the Atlantic seaboard. Since St. Louis is more than one thousand miles nearer San Francisco than New York its business interests insist that it ought to be given the advantage of that difference in distance. The defendants justify the present tariff upon the ground of water competition, and the facts bearing upon that issue will be stated later. No particular industry is complaining. The testimony tended to show and we find that since 1894, when graded rates were first abolished and the blanket system put in effect, the middle west has been steadily gaining in its sales upon the Pacific Coast in comparison with the Atlantic seaboard. Pacific Coast jobbers now buy much more extensively in the middle west than they did five or ten years ago. Middle west jobbers sell more upon the Pacific Coast than they did formerly. It was said that at least 60 per cent of the goods consumed upon the Pacific Coast, which originate in the east, came from points west of Buffalo and Pittsburg. This gain of the middle west in Pacific Coast business seems to be due mainly to the increase of manufacturing in that section, and in a measure to the fact that middle west jobbers and manufacturers have worked Pacific Coast territory with more vigor and persistence than their eastern competitors. It will be observed, moreover, in the subsequent statement of the case, that freight rates from 1894 to 1898 were such as to stimulate business from the middle west; and it should be still further noted that while the terminal rate is blanketed from the Missouri River, the "intermediate" class rates in all cases, and intermediate commodity rates in many instances, are still graded. The first class intermediate rate to California points under the present tariff is: from the Missouri River \$3.50, from the Mississippi \$3.70, from Chicago \$3.90; while from points east of Chicago the rate seems to be made by a combination upon Chicago. The effect of this is to

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give the Missouri River an advantage over the Mississippi and Chicago in all territory covered by the intermediate rate, and to virtually prohibit business from points east of Chicago in that territory.

The most serious complaint is addressed to the alleged discrimination against eastern jobbers in favor of Pacific Coast jobbers. By eastern jobbers are now meant all those located east of the Missouri River, although it does not appear that any considerable business is transacted by jobbing houses east of Chicago. The tariff complained of is that of June 25, 1898, and the above discrimination is alleged to be effected by making too wide a difference between carloads and less than carloads, and by applying a scheme of varied commodity rates which prevents the shipping of different articles of a similar character in the same package, and the combining of similar articles in carloads.

It is very difficult to state in a comprehensive way the extent of the difference in rates applicable to carload and less than carload shipments. The western classification places many articles in the 4th class when shipped in less than carloads, and in the 5th class when shipped in carloads. The difference between 4th and 5th class rates is 30 cents from the Missouri River and 25 cents from the Mississippi River and points east. It has already been stated that the great bulk of transcontinental traffic moves upon commodity rates. An examination of the westbound commodity tariff shows that 2,219 articles so move, of which 922 have both carload and less than carload rates; 835 take the same rate both carload and less than carload, while 462 are provided with carload rates only. Of the 922 articles taking both carload and less than carload rates, the differential is in very many instances 50 cents per 100 pounds. There are 152 instances in which that difference is less and 29 in which it is greater than 50 cents. In case of the 462 articles which take only a carload commodity rate, any less than carload movement is under the class rate, and this produces a differential which is very much greater, being in some instances more than \$3.00, in almost no instance less than \$1.00 per 100 pounds, and making a less than carload rate, which is in almost every instance more than double the carload

rate. It was said by several witnesses for the complainants that the differential would average 50 cents per 100 pounds. This was probably intended to refer to the traffic in which the witness was interested, and it seems probable that, as applied to the transportation involved in this proceeding, that may be a fair average. While an average differential might be figured out from the entire schedule, the statement of it would mean little or nothing.

Any general statement of this sort is, however, of but little consequence. It is much more important to understand the manner in which these differentials discriminate against the eastern wholesaler, and the extent of that discrimination.

The great bulk of manufactured articles consumed upon the Pacific Coast is produced in the east. Whether those commodities are wholesaled by the Pacific Coast jobber or by the middle west jobber the shipment is ordinarily in carloads from the factory to the warehouse of the jobber and in less than carloads from thence to the retailer. Of rail shipments from eastern factories by Pacific Coast jobbers at least 90 per cent goes in carload lots and a considerable portion of the balance are emergency orders which require quick delivery. Upon the other hand, testimony showed that the eastern jobber could distribute to the retailer in carloads only to a very limited extent. When it is remembered that the warehouse of the Pacific Coast jobber is located at a terminal point, and that the rate from the east to the intermediate point is made by adding the local from this terminal point back to the intermediate point, it will be seen that the wholesaler upon the Pacific Coast has the advantage of the wholesaler in the east by the difference between the carload and less than carload rate. This advantage is important just in proportion as the value of the goods per hundred pounds, or more properly the margin of profit per hundred pounds, is greater or less.

A concrete illustration will make this clear, and for that purpose we may take bar iron. The rate on this commodity from the east to Pacific Coast terminals is C. L. 75 cents, L. C. L. \$1.25. Assume now some intermediate point to which the local rate from the terminal is 50 cents L. C. L. The Pacific Coast jobber pays in freight upon a hundred pounds of iron delivered 9 I. C. C. REP.

to the retailer at that point 75 cents to his warehouse and 50 cents local, in all, \$1.25; while his eastern competitor pays on the L. C. L. shipment from his warehouse \$1.75. This gives the Pacific Coast jobber a clear advantage of 50 cents in the freight rate at all points which base upon the terminal point. The testimony of the complainants tended to show, nor was it denied by the defendants, that the profit to the jobber in the handling of bar iron is less than 50 cents per hundred pounds. Unless, therefore, there be some compensating advantage to the eastern jobber he is by this differential prohibited from wholesaling this commodity to retailers upon the Pacific Coast when his shipment from the east is in less than carloads.

It should also be noticed that the eastern jobber must pay the freight on the carload shipment from the factory to his warehouse in the east. It appears that in some instances freight allowances are made by manufacturers which to an extent equalize any disadvantage of location upon the part of the wholesaler. The testimony is not sufficiently definite for us to determine to what extent this is true, nor whether in case an allowance of that kind is made the jobber upon the Pacific Coast can also obtain the benefit of it. We are unable to make any finding in this respect, but it is evident that owing to the blanket system of rate making from territory east of the Missouri River the jobber of the middle west labors under an additional disadvantage of greater or less importance growing out of this fact.

It appeared that the eastern jobber was enabled to some extent to combine shipments, sending an entire carload to one consignee upon the Pacific Coast and there distributing to different purchasers; but it was said that this method of handling business was extremely unsatisfactory and but little resorted to.

What is true of bar iron is also true of most classes of heavy hardware, so called, which include most kinds of manufactured iron in its simpler forms, as sheet iron, corrugated iron, nails, pipe, horseshoes and in general any form of hardware where the cost of manufacture has not added very materially to the price of the raw material. It also appeared that the same thing was true of some of the more bulky articles among drugs and medicines, paints and oils, stationery supplies, wagon material,

plumbers' supplies and some other lines, with respect to which the differential often exceeded and generally approximated the profit per hundred pounds to the wholesaler. The testimony of retailers upon the Pacific Coast was to the effect that after the putting in of the tariff of June 25, 1898, they were unable to buy many of the heavier articles from eastern jobbers. We think it appears, and we find, that with respect to many of the more bulky articles above named the differential is prohibitive against the eastern wholesaler.

While, however, this is true of many heavier articles, it is not true of the greater number of commodities in which the eastern wholesaler deals. In case of the higher priced commodities the profit per hundred pounds is much greater than the differential. When the tariff complained of took effect the Simmons Hardware Company determined to equalize the disadvantage which its customers incurred by making a freight allowance of 50 cents per hundred pounds. At first this allowance was paid upon all articles, but it soon became evident that there were certain articles which, including the freight allowance, were handled at actual loss, and that company very soon ceased to pay freight allowances upon these commodities. The vice-president testified that these commodities were the fifteen following: Shot, bar-lead, grindstones, nails, wire, rope, anvils, sheet-zinc, sheet-steel, horseshoes, sheet-iron, staples, wire-staples, small chains. Except so far as these articles can be shipped in carloads, either straight or combined, they cannot be wholesaled from the east upon the Pacific Coast. It was claimed that these heavier articles were usually staple commodities, and that the inability to handle them was a serious handicap upon the eastern jobber, since the retailer preferred to patronize that concern which could supply all his wants. There is probably force in this claim, although it was denied by some of the defendants. It is manifestly impossible to find definitely to what extent the differentials, as applied to the entire volume of business, discriminate against the eastern merchant.

The complainant also laid great stress upon the injustice of what were termed varied commodity rates. One provision of the tariff in question is that where commodities taking different rates are shipped in the same package the entire package shall

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pay the highest rate applicable to any commodity contained in it. It was urged that the defendants had cunningly devised this scheme of commodity rates for the purpose of compelling the eastern jobber to incur the additional expense of separate packages, or pay a higher rate than his western competitor.

This will perhaps best appear from another illustration. Door bolts take a rate of \$1.50, horse cards \$1.90, dog collars \$2.20 and grass hooks \$1.75. These are all applicable in any quantity, there being no carload rates in case of any of these commodities. The Pacific Coast jobber purchases from the factory in original packages and ships to his warehouse upon the rate applicable to each commodity. If now his eastern competitor makes sale to a retailer upon the Pacific Coast of a limited quantity of each of these four commodities, he must do one of two things: either place them all in one package paying a rate upon the whole of \$2.20, or put them into separate packages, thereby incurring the expense of packing and being obliged to pay freight upon the weight of the boxes.

It is also insisted that by refusing the right to ship in mixed carloads and by unnecessarily distinguishing between commodities of the same character which take a carload rating, a discrimination is worked against the eastern jobber. Take for example, sheet iron, black and galvanized. The tariff now in force applies commodity rates, L. C. L. \$1.25, C. L. \$.80, to black sheet iron No. 16 and heavier; the same rates to black sheet iron No. 17 and lighter; the same rates to galvanized sheet iron. These commodities cannot be shipped in mixed carloads, and the result of naming each of these articles as a separate commodity is to prevent the eastern jobber from shipping a carload containing a quantity of these three kinds of sheet iron. The jobber upon the Pacific Coast can without inconvenience purchase an entire carload of each one of these articles; the eastern jobber can seldom sell a whole carload of any one of them to a retailer, but could often sell a carload if he had the right to combine the three articles in the same shipment. It is evident that the varied commodity rates and the refusal to combine similar commodities in carloads do give the Pacific Coast jobber a material advantage over the eastern jobber; just

how great that advantage may be cannot be definitely determined.

The defense in this case was undertaken by both the jobbing interests of the Pacific Coast and the defendant carriers. Since the standpoint is different in case of each of these parties their claims may well be considered separately.

The Pacific Coast jobbers urged, first, that owing to conditions under which they did business in comparison with their competitors in the middle west, they must have some advantage in the rate in order to exist at all, and second, that from their peculiar location they were entitled to as great a measure of preference as they were given by the tariff in issue.

The jobbing business of the Pacific Coast is transacted under peculiar conditions. As already said, the supplies of the jobber are almost entirely drawn from the east and middle west. Jobbing houses are situated mainly upon the Coast, and these supplies are therefore taken to the coast and from thence sent back into the interior. Owing to the method by which rates are made, it necessarily follows that the territory to which the coast jobber can distribute is limited. It has been seen that the "intermediate" rate limits the territory within which the rate to intermediate points is made by building up upon the terminal rate, and it is evident that as soon as this limit is passed going towards the east the Pacific Coast jobber is at a disadvantage in the freight rate. This limit is not the same with respect to all commodities. In case of sheet zinc, as we have already seen, it is but 155 miles, while in some few instances the combination extends back from the coast a thousand miles, possibly farther. Nor does the line of demarcation so fixed exactly correspond with the actual business limit, since the jobber can only operate in territory accessible to most of the articles in which he deals. The distance towards the east which is open to the jobber upon the Pacific Coast varies somewhat in different lines of merchandise, but generally speaking it is about the 115th meridian, some three or four hundred miles from the coast. It was claimed by the defendants, and not seriously denied by the complainants, that east of this line the territory was exclusively occupied by the eastern wholesaler,

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except in case of some few articles originating upon the Pacific Coast.

This scheme of rate making also limits the territory of the individual jobber upon the Pacific Coast north and south as well as east. Rates from eastern originating points are the same to all terminals. Rates to interior points are made by adding the local rate to the nearest terminal. It follows therefore that the jobber located at some terminal point like San Francisco, as he goes north or south, very soon enters the territory of some other terminal point, like Portland or Los Angeles, in which his local rate is greater than that of his competitor located at such terminal. The effect is to draw a series of circles with each terminal point as a center within the circumference of which the jobber located at the terminal point has the advantage of all others.

Not only does this confine the territory within which a particular Pacific Coast jobber can compete upon even terms with some other Pacific Coast jobber, but it also limits the territory north and south within which the Pacific Coast jobber has the advantage of his eastern competitor. Less than carload rates from the east are the same to interior points no matter upon what terminal a particular point may base, and it soon happens, therefore, that the less than carload rate to such point is lower than the rate arrived at by combining the carload rate to the terminal point and the local rate from that point. Take San Francisco as an example. Nominally, rates to San Francisco are the same as to other Pacific Coast terminals. Owing to its superior shipping facilities as a seaport it probably enjoys some actual advantage in the matter of the rate. When, however, the jobber attempts to distribute from San Francisco, he finds all around him terminal points through which he must operate, Marysville distant upon the north 142 miles, Sacramento upon the east 90 miles, Stockton to the southeast 103 miles and San Jose to the south 50 miles. Now, the rate to almost any interior point outside this cordon of terminals is made by adding the local from these points, while the San Francisco jobber must pay the local from San Francisco itself. This operates to materially decrease the advantage which the San Francisco wholesaler would otherwise possess. But still further, if he attempts

to go farther north he very soon reaches territory where the rate bases upon Portland and where his combined carload and less than carload is higher than the less than carload rate from St. Louis. So if he attempts to proceed south he speedily comes to a point where the rate bases upon Los Angeles and where the combined rate is in favor of the middle west jobber. Canned goods were frequently referred to in the testimony. Taking this commodity as an illustration, we find that the carload rate to San Francisco plus the local rate to Ashland, Ore., a distance of 431 miles, is \$2.08, while the direct L. C. L. rate from the Missouri River, basing on Portland, is \$2. At Mojave, California, 382 miles southeast, the combined carload and less than carload rate of the San Francisco jobber is \$1.81, as against a direct L. C. L. rate from the Missouri River of \$1.99.

These illustrations serve to show how, while this scheme of rate making favors the Pacific Coast jobber as a class, it limits the territory of the individual Pacific Coast jobber both as against his competitor upon the coast and as against his competitor in the east. While it appears that San Francisco jobbers do business over the whole Pacific Coast, it is done at a serious disadvantage beyond the limits of a comparatively narrow sphere; indeed, one witness in behalf of the complainants expressed the opinion that the territory of the wholesaler upon the coast was so narrow that there was really no excuse for his existence.

The territory of jobbers east of the Missouri is of course limited against one another. It is not material here to discuss the extent of that limitation, since we are considering the competition between eastern jobbers as a whole and those upon the Pacific Coast. The fact that the rate from the warehouse of every wholesaler in the middle west to the store of each retailer upon the coast is the same, gives him an advantage over the individual Pacific Coast jobber outside the immediate "sphere" of the latter, which in a measure offsets the decided advantage of the Pacific Coast jobber within that sphere.

The effect of thus circumscribing the territory of the Pacific Coast jobber is to render the volume of his business comparatively small. That of all the houses with which he competes in the east is much more extensive. The two concerns most

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prominent in the prosecution of this proceeding were the Simmons Hardware Company of St. Louis and Hibbard, Spencer, Bartlett & Co. of Chicago; of which the former does business in all portions of the United States except New England, while the representative of the latter testified that the operation of his house was only limited by the confines of the earth. Jobbers upon the Pacific Coast earnestly insisted that these great establishments were not dependent upon that territory for any considerable part of their business, and that they used it as surplus territory in which they could afford to operate at a very small margin of profit. It also appeared that owing to the distance at which these houses upon the Pacific Coast were located from their base of supply, the amount of stock carried was very large in proportion to the volume of business done; and that the expense of transacting that business was greater than in the east.

Certain articles are produced upon the Pacific Coast, and certain others are imported from Europe and from eastern Asia, while still others manufactured in the eastern portion of the United States are sold at a delivered price. With respect to all these the Pacific Coast jobber has the advantage of his eastern rival. But it did not at all definitely appear what the extent of that advantage might be. We are inclined to think that if the Pacific Coast jobber had no advantage in the freight rate at which he could bring his merchandise from points of production and distribute it to points of consumption, he would find it extremely difficult to hold his own.

The principal contention of the Pacific Coast jobbers is that their location entitles them to such an advantage. The controlling factor in that location is the possibility of bringing in goods from the Atlantic seaboard and foreign countries by water. The effect of water competition is also the defense largely relied upon by the carriers in justification of their tariffs, and the facts in reference to it as applicable to each may be stated together.

Several of the jobbing houses whose representatives testified in this proceeding were established at Sacramento and San Francisco a half century ago. At that time the only means available for the transportation of merchandise from the Atlan-

tic seaboard to their warehouses was by sailing vessel around Cape Horn, or through the Straits of Magellan. In 1854 the Panama railroad was constructed. By this route freight passes from New York to Colon by ship, from Colon to Panama, a distance of fifty miles, by rail, and from Panama to San Francisco by water. Upon this route steamers have been used instead of sailing vessels, the distance is much shorter, the time much quicker, the certainty of arrival much greater, and generally the advantages offered are much superior to those by sail around South America. It has from the first transacted a considerable amount of business between the two coasts.

The first transcontinental line of railroad was the Central Pacific in connection with the Union Pacific, and was opened for business in 1869. This line at once began to compete for transcontinental freight, with no great amount of success at first. It succeeded in carrying a portion of the higher class merchandise, but the great bulk of all commodities continued to move by water or by the Panama route. It was estimated that as late as 1878 not over 25 per cent of the total tonnage moved into California by rail. In that year, for the purpose of obtaining a larger share of this traffic, the rail line inaugurated what was known as the special contract system involving a contract between the railway and each individual shipper, by which the merchant agreed to patronize the railway exclusively, in consideration whereof the railway made certain special rates of freight. These rates were arrived at by examining the shipments of the house for a year or more previous, determining the cost at which these goods had been actually shipped, taking into account the item of insurance and interest, and then making a rate, not as low as the water rate, but one which on the whole was fairly equivalent to that rate, and which in consideration of the superior advantage attending the rail shipment, it was for the interest of the shipper to pay. This system was not popular at the outset, but before long every important jobbing house in San Francisco, with one exception, had made a contract of this kind. The effect was to very much increase the rail tonnage. It seems probable from the testimony of Mr. Stubbs, who has been familiar with these matters from the railroad standpoint all along, and from that of the various jobbers

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who were importing goods at that time, that in 1884 when this plan finally went out of vogue, the percentage of rail tonnage had risen from 25 per cent to between 60 and 75 per cent.

In 1881 the Atchison, Topeka & Santa Fé Railway was built to a connection with the Southern Pacific at Deming, and in 1882 the Texas & Pacific connected with the same line at El Paso. In 1883 the Southern Pacific route from New Orleans was opened, and the same year saw the completion of the Rio Grande Western and the extension of the Santa Fé to Mojave. In the northwest the Northern Pacific was opened for traffic that year, and the completion of the Oregon Short Line the following year gave the Union Pacific an entrance into Portland. The multiplication of these transcontinental routes produced a corresponding diversity of interest, and the testimony of Mr. Stubbs was that the contract system was abandoned because the various lines could not agree among themselves upon the division of business and the maintenance of rates. To obviate this embarrassment the Transcontinental Association was organized, having for its purpose a pooling distribution of transcontinental traffic, or earnings, and the fixing and maintaining of transcontinental tariffs. Mr. Stubbs stated that the basis of the tariffs promulgated by this association was the rates which had been actually arrived at in the manner stated under the special contract system.

As already said, the Santa Fé reached Mojave in the latter part of 1883 and obtained from the Southern Pacific by lease and purchase rights to the north of that point in California, which made it in effect a California through route. Upon the strength of this it now claimed a larger portion of the business than the members of the Transcontinental Association were willing to concede to it. The result was a dissolution of that association, and the breaking out of a rate war which lasted for the better part of a year. For the purpose of ending these rate disturbances the Transcontinental Association was reorganized. After the passage of the Act to regulate commerce it was continued in force, being modified by the elimination of all pooling provisions, and having for its object the making and maintaining of transcontinental rates.

When the Central Pacific and Union Pacific began business

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as the first transcontinental railway line they found in the Panama route their most troublesome competitor. For the purpose of controlling this competition these two lines and their connections in 1871 entered into a contract with the Pacific Mail Steamship Company, which then did the ocean carrying by the Panama route both from New York to Colon and from Panama to San Francisco, by which the railways leased and paid for the entire space in the steamships of the Pacific Mail Company which was devoted to California business. Under this contract the Steamship Company disposed of this space according to the direction of the railways, naming such rates, making such regulations and generally so conducting with respect to traffic as they directed. The policy of the railways was to offset the Panama route against the clipper ships. This contract was taken over by the Transcontinental Association when it was formed, and it continued in effect with some slight interruptions from 1871 until December 31, 1892. During that year the Great Northern Railroad, which had become a transcontinental line and a member of the Transcontinental Association, gave notice that it would withdraw from the association on December 31, and in consequence the association itself was dissolved and the contract with the Pacific Mail terminated.

Previous to this time there had been in force a contract between the Pacific Mail Steamship Company and the Panama Railroad Company under which the steamship company acquired the exclusive use of the Panama Railway for business moving between the Atlantic and Pacific Coasts. That contract expired about this same time, and the Pacific Mail declined to renew it upon the original terms in view of the expiration of its own contract with the transcontinental railways. In consequence the Panama Railroad Company put on a line of steamers of its own between New York and Colon known as the Columbia Steamship Company. Meantime the merchants of San Francisco had become dissatisfied with the treatment which they were receiving from the railways. They knew of the existence of contracts between the transcontinental lines and the Panama route, and regarded the whole arrangement in the light of a monopoly which extorted unreasonable rates and imposed unreasonable conditions. Learning that the contract between the

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Panama Railroad and the Pacific Mail was about to expire they proposed to put on a line of steamships between San Francisco and Panama, thus making, in connection with the Panama Railroad and its own steamships, an independent line from New York to San Francisco. In the execution of this plan the North American Navigation Company was organized by the merchants of San Francisco.

This route began operations in the year 1893, and attempted from the first to maintain a differential upon traffic moving between the Atlantic and Pacific Coasts which would deprive the railroads of a considerable share of the business previously handled by them. The result was a most bitter and reckless rate war during which there was an utter demoralization of rates and rate conditions. The San Francisco jobbers were upon the side of the ocean, and not only were rates abnormally reduced, but differentials were abolished, the right to ship in mixed carloads was extended, every inducement was held out to the jobber of the middle west to invade the territory of the Pacific Coast. The North American Navigation Company only operated about one year, but its vessels were taken over by the Panama Company and the competition itself continued in full force until the end of the year 1895.

This episode had been an expensive one for all parties concerned. It is in testimony that the merchants had put into the North American Navigation Company \$350,000, which was entirely lost; and their indirect loss must have been greater still. They had seen their territory diminish, their profits grow less, their business decrease under the competition which had been fostered by rail rates from the east. The situation was not more satisfactory to the railways for they had sacrificed millions of dollars in revenue and were still receiving what they regarded as abnormally low rates. Both parties were therefore anxious for some sort of an accommodation. Representatives of the transcontinental lines upon the coast were instructed to mollify as far as possible Pacific Coast shippers and the shippers in their turn seem to have been anxious to meet this advance. In 1897 a communication was addressed to the railways by the jobbing interests upon the Pacific Coast stating in substance that rates ought to be readjusted in the interest of the coast job-

ber; that more rigid inspection rules should be enforced preventing their competitors in the middle west from obtaining fraudulent rates; and intimating that if this was done they would not object to an advance in rates and would find it for their interest largely to place shipments with railroads. For the purpose of effecting some arrangement a meeting of the transcontinental lines was held at Del Monte in the fall of that year. Representatives of the Pacific Coast jobbers and also the jobbers of the middle west were present. Both parties were heard separately and much discussion was had, but no definite conclusion reached. The conference adjourned to meet at Milwaukee the following spring. Here again representatives from both the coast and middle west were present and presented their views. The result of this conference was the tariff of June 25, 1898, which is attacked in this proceeding.

The jobbers of the middle west vehemently insisted that in this tariff they had not received proper consideration, and a subsequent meeting was held at St. Paul in May, 1899, at which the matter was again gone into by the parties in interest, with the result that the Great Northern and the Northern Pacific companies modified in certain essential respects the tariff of the previous June by a supplement taking effect May 1, 1899, and known in this case as the St. Paul Supplement. This supplement reduced in some instances the differentials between carloads and less than carloads, and modified the varied commodity rates in the hardware schedule, and perhaps in some others.

The complainants insist that the tariff of June 25, 1898, was the result of an agreement between the railways and the jobbers of the Pacific Coast that tariffs should be adjusted in their favor, and that they in consideration would patronize the rail instead of the water; and that the effect of that agreement has been to largely destroy effective competition by water.

From 1871 until January 1, 1893, the Panama route was absolutely controlled with respect to Pacific Coast business in the United States by transcontinental lines, and there was during that period no competition with that line. For some years afterwards that competition was extremely active. It appears that finally the Pacific Mail became the steamer part of the line from Panama to San Francisco, while the Columbia Steamship

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Company continued to form the link between New York and Colon. To-day the agent of the Panama Company in New York makes the west bound rates while the agent of the Pacific Mail at San Francisco controls the east bound shipments. The tariffs west bound are based upon the corresponding tariffs of the rail lines, being 20 per cent less on carloads and 30 per cent less on less than carloads. This apparently gives that route substantially the full capacity of its steamers in traffic. At the time of the Milwaukee meeting the agent of the Panama Company was invited to attend and did so. He there stated to the representatives of the transcontinental lines that he should carry 3,000 tons per month and should make whatever rates were necessary. Apparently the above adjustment of tariffs loads his vessels to that extent and the rail lines tacitly suffer the maintenance of those differentials, although it should be noted that the agent of the Panama route said that while he published he did not necessarily maintain that tariff. While the testimony in this case fails to show any contract or understanding through which competition by the Panama route is limited it can hardly be said that at the present time that line affords much actual competition between the coasts.

With respect to competition by the all-ocean route the matter has all along stood entirely otherwise. At first this was the only means of transportation for merchandise. As late as 1878 probably 75 per cent of the entire tonnage came in by sail. In 1884 this percentage had very much fallen, but still equaled 25 per cent. Since then there has been a further decline, the testimony showing that for the last ten years not more than 10 to 15 per cent has arrived in this way. But there is nothing in the case to show that any agreement has ever subsisted between rail lines and the route around South America as to any division of traffic, or any establishment of rates.

The principal witness as to the present state of water competition by all-ocean routes was Mr. Jackson, representative of Flint, Dearborn & Co., of New York, managers of the principal line of clipper ships between the Atlantic and Pacific Coasts. Mr. Jackson had been for a long time identified with this business, and was familiar with its history in the past and in its present condition. From his testimony it appeared that during

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the year 1898 there were shipped from New York to California, mainly San Francisco, by sailing vessels about 34,000 tons, and from Philadelphia about 6,000 tons. Substantially the same tonnage had been forwarded the previous year, 1897. It also appeared that some other vessels were engaged in the same business between Philadelphia and San Francisco, and perhaps between New York and Pacific Coast points. Formerly the tonnage carried by these lines had been much greater than it was in those years. For some years previous to 1890 it had varied from 50,000 to 100,000 tons per annum. The rate war which broke out in 1894 diverted the tonnage from sail to rail, and the effect of this was continued after the close of those rate disturbances by the Spanish war, which rendered rates of insurance high and ships scarce. The outlook for the future was, however, said to be more promising.

Mr. Jackson in addition to being a representative of Flint, Dearborn & Co., was also the treasurer of the American-Hawaiian Steamship Company, a corporation organized for the purpose of owning and operating a line of steamers between New York, San Francisco and Hawaii *via* the Straits of Magellan. He first testified in November, 1899, and at that time this company had placed orders for four steamers of 8,500 tons each to be used in this service. It was said that these steamships would carry, beside the necessary coal, 7,500 tons of freight, and would make the run from New York to San Francisco in about 60 days. It was expected that each steamer would make two trips per year, thus affording a capacity of 60,000 tons west bound which it was believed could easily be obtained.

Subsequently, in December, 1900, Mr. Jackson again testified, and then stated that two of the steamers above referred to had already been delivered and put into service; that the two others referred to in his former testimony would soon be ready for delivery, and that his company had within the year contracted for three larger steamers for this same service with a capacity of 15,000 tons each. He stated that this would give a total carrying capacity west bound of about 126,000 tons per annum, and that his experience and observation and the experience and observation of others identified with this enter-

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prise induced the confident belief that traffic to this amount could be obtained easily at very profitable rates.

Almost every article which moves from the east to the Pacific Coast has been at times actually carried by ocean. A list of the articles transported during the year 1898 was introduced and it embraced nearly every article of merchandise. The territory from which this route draws its freight is mostly that in the immediate vicinity of New York. Shipments have been taken from as far west as Chicago, and even St. Louis, but this is of rare occurrence. The great bulk of its traffic is from points east of Buffalo and Pittsburg.

In the making of rates by ocean no distinction as such is observed between carload and less than carload lots. Mr. Jackson testified that about three-fourths of the tonnage forwarded by him was in lots exceeding 30,000 pounds and one-fourth in lots less than that figure; the range of the smaller lots being from 1,000 to 20,000 pounds. While there is no less than carload rate as such the amount charged per hundred pounds for smaller quantities is greater than that charged for larger quantities, the difference being from 10 to 30 cents per hundred pounds. Everything depends, however, upon the quantity offered for shipment and the state of the ship's contracts for the freight. Large quantities are often taken at very low figures. We are inclined to think that the ordinary difference made by water between carloads and less than carloads, while not a fixed sum, is considerably less than the difference prescribed by the tariff of June 25, 1898, upon rail shipments.

The witness objected to stating the exact rates at which merchandise had been carried by his line, but did give some illustrative examples; among others the following, in connection with which the rail rate is also given,

	Water Rate.	Rail Rate.	
		L. C. L.	C. L.
Bar iron	30 to 35¢	\$1.25	\$.75
Grindstones	32½¢	1.90	.75
Soil pipe	35 to 40¢	1.90	.75
Radiators	40 to 45¢	2.20	1.30
Hardwood lumber . . .	40 to 42¢	1.25	.75

It must be remembered that a water rate of a certain number of cents per hundred pounds is by no means equivalent in value

to the shipper to a rail rate of the same amount. Several things must be taken into account in determining the relative desirability of the two rates. The item of marine insurance is important, and Mr. Jackson stated that this was by his sailing vessels about $1\frac{1}{2}$ per cent of the value of the commodity; the time occupied in transit and the consequent loss upon the investment is an item of consequence, the ordinary run from San Francisco being in the vicinity of 135 days. In addition to this is the liability to damage by salt water in case of many articles as well as the delay and uncertainty incident upon that means of transportation. No witness was prepared to state what rate by ocean was equivalent to a rate of \$1 by rail; indeed the witnesses seemed to agree that it would be impossible to answer that question definitely since its answer must depend upon the commodity transported. One witness said that after everything had been taken into account he would still pay the railways on most commodities a rate 5 per cent higher than that by water.

A portion of the disadvantages attending transportation by water will be largely obviated through the use of steamers in place of sailing vessels. As just stated the ordinary time by sail from New York to San Francisco is estimated at 135 days, but the time actually consumed often greatly exceeds this, sometimes being as much as a whole year. This uncertainty as to date of arrival has been a serious objection to that method of carriage. The steamer is expected to make the run around South America in 60 days, and its arrival can probably be counted upon with more exactness than arrivals by rail. The item of insurance will also be much less with steamers than with sailing vessels as will the loss on the investment during the period of transit. It was said that with a canal across the Isthmus of Panama the trip from New York by the steamers now ordered could be made in about 20 days, and that doubtless if such a canal were constructed faster steamers would be put on which would make the trip in from 15 to 16 days.

It does not appear that the tariff of June 25, 1898, although the rates were materially raised, produced much effect upon the tonnage moved by water. There can be no doubt that the different carriers believed that one result of the putting in of this tariff would be to retain at higher rates, if not to actually increase,

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their transcontinental shipments, and there is just as little question that the jobbers of the Pacific Coast had given the rail lines to so understand. There does not appear to have been or to be any definite agreement of that sort. It is rather a result growing out of the situation of the parties; a *modus vivendi* so to speak. It is to the interest of the Pacific Coast jobber that these differentials be maintained, and he can well afford not to be too zealous in seeking better rates by water so long as they are maintained. At the same time the jobbers upon the Pacific Coast appear to be free to avail themselves of the water route whenever it is for their substantial interest to do so. They regard the ocean as the regulator of their rates and would hesitate to extinguish or cripple that means of transportation. The testimony shows that large quantities of merchandise are brought in by water now, and that still larger amounts would come by that route if rates were sufficiently inviting.

The organizers and promoters of the American-Hawaiian Steamship Company are persons long identified with this business and familiar with all the conditions surrounding it. The fact that this company has taken measures to provide the large amount of tonnage above indicated shows conclusively that there is no hard and fast agreement which prohibits the Pacific Coast jobber from patronizing the ocean carrier. Undoubtedly the effect of the tariff of June 23, 1898, was to limit to a degree competition by ocean and probably to secure the maintenance of somewhat higher rail rates than could otherwise be kept in force; but active competition by water still exists and is rapidly increasing. No suggestion was made in this case that terminal rates, either carload or less than carload, were unduly high.

The carrier must meet this water competition mainly with the carload rate. Ninety per cent of the merchandise brought from the east to the Pacific Coast by Pacific Coast jobbers comes in carload lots. The less than carload shipments are often in the nature of emergency orders requiring quick delivery and not therefore susceptible of ocean carriage.

It is also insisted that the varied commodity rates complained of are justified by conditions introduced by water competition. The liability to loss and damage during transit by ocean differs

greatly with different articles. Since all these factors enter into the comparative estimate of the desirability of a given water and rail rate they must be taken into account in fixing the rail tariff. It will be remembered that bar iron, sheet iron one thickness, sheet iron of another thickness, and corrugated iron are all treated as different commodities, and this is said to be justified by the fact that conditions of ocean shipment are different with these different articles. Bar iron is less liable to damage than the other kinds named; thin sheet iron is more liable to damage by salt water and to be bent and injured in the loading and unloading from the vessel; corrugated iron is liable to be injured by pressure upon it; and for these reasons if the water rate was the same the shipper might avail himself of it in one case and not in another, and to meet these conditions these articles must be treated as different commodities by rail. While this claim of the defendants is referred to there is no evidence upon which any specific finding in respect to it can be made.

The carriers further justify these differentials by difference in cost of service. It is obvious that the actual expense of handling less than carload business is greater than it is for carload traffic. The carload is generally loaded and unloaded by the shipper, while the less than carload is handled at both ends by the carrier. In the former case there is but one entry for each carload while in the latter there are from 25 to 150 in case of each car which must be extended upon all the books where a minute of the transaction is entered. The expense of providing station facilities is very much greater in case of less than carload than carload business.

In addition to the difference in expense at the terminals the actual cost of hauling is much more in the less than carload than in the carload. A crew of trainmen averages more miles in doing carload business than when distributing less than carload traffic from station to station. The loading of carloads is very much heavier than the less than carload, from which it results, first, that less non-paying weight is hauled in carload traffic, and second, that the car is more nearly used up to its capacity. A freight car weighs, approximately, 12 tons. If that car be loaded with 6 tons of freight, its movement involves the handling of 18 tons, of which but 6 tons are paying freight, 9 I. C. C. REP.

while if the car were loaded with 16 tons, there would be a movement of 28 tons, of which 16 tons are paying freight. Assuming that the average load of less than carload business is 6 tons, and the average load of carload business 16 tons, and that the cost of hauling per ton is the same in both cases, a rate of \$1.00 on carload would be about equivalent to \$1.75 upon less than carload. But the car mileage is the same in both cases, and the cost of movement does not increase in proportion as the weight of the carload increases, so that upon this basis of loading there would actually be a greater difference in cost of service.

The general manager of the Southern Pacific Company, who was introduced as a witness upon this point, testified that he had given the matter considerable attention and was persuaded that the actual cost of handling less than carload freight upon the Southern Pacific system was $2\frac{1}{2}$ times the cost of handling carload freight. He further said that less than carload shipments averaged in weight about six tons per car, while carload shipments were about sixteen tons per car. It appeared however that this estimate referred to the Southern Pacific system as a whole, embracing both local and transcontinental traffic. It is evident that the same proportion would not hold good with respect to the latter traffic considered alone.

Shipments *via* the southern route are received by steamer at Algiers and loaded by the Southern Pacific Company into solid carloads. The witness said that in loading these cars no substantial distinction was made between carload and less than carload freight. Less than carload business received by rail connection from points east of the Missouri River is stopped at some transfer point, being taken from the car of the connecting road and transferred to the car of the transcontinental line. In this operation carloads are so combined that each car is substantially filled. Still, as a result of this process, less than carload freight is not loaded as heavily as carload. The witnesses all agreed that the heaviest loads were straight carloads received from the factory. An actual account of the receipts of transcontinental business at the city of Portland, Oregon, for the last six months of the year 1899 showed that about one-fourth of all the cars contained less than carload freight; that the weight of these cars

was about seven tons as against fourteen tons of carload business, and that the earnings of the carload freight were \$288 per car as against \$270 in less than carloads.

The relative expense must be estimated not from the transfer point, but from the point of origin, and it is quite possible that the cost of shipping less than carload business up to the transfer station may be relatively greater than from such station across the continent. Upon the other hand it must be remembered that while the earnings of the less than carload business above mentioned were somewhat smaller per car than those received from carloads, the weight, and therefore the cost of hauling, is also considerably less; and that these earnings were computed in 1899 after the St. Paul Supplement, which in some instances reduced the less than carload rate, was in effect upon that traffic.

The station agent at Portland testified that the terminal expense at his station was three times as much per ton for less than carload than for the carload business.

It is impossible to make an exact finding as to the relative cost of handling this carload and less than carload transcontinental business, but we are inclined to think that the cost of handling the less than carload exceeds the carload by about 50 per cent.

The defendant carriers also insist that these differentials are in no respect abnormal; that they are no greater than differentials previously in force in transcontinental tariffs established under normal conditions; and no greater than those in force under tariffs in different parts of the country at the present time. In substantiation of this claim the differentials in question were compared with those of transcontinental tariffs previous to the breaking out of the rate war of 1894, and with west bound tariffs now in effect between New York and Omaha, New York and Denver, Chicago and Salt Lake City, Omaha and Denver, and also those made by the Great Northern and Northern Pacific in west bound tariffs between St. Paul and intermediate points.

The comparison was made by noting the number of instances in which the differential is higher, the number in which it is the same and the number in which it is less. So compared it appears that the differentials in the tariff of June 25, 1898, 9 I. C. C. REP.

are not greater than those in force in transcontinental tariffs previous to 1894; that they are not materially higher than those between New York and Omaha, although the distance is less and the rates lower in the latter case; that they are less than those between New York and Denver, and not greater than those in force between Chicago and Utah common points and St. Paul and Montana points.

The complainants attack the fairness of the instances selected for the reason that the Omaha rate is made by a combination upon the Mississippi River and therefore involves two sets of terminal expenses; that the New York and Denver rate is made by three combinations and the Chicago-Utah rates by two.

The west bound transcontinental tariff in force at the breaking out of the rate war so frequently referred to was that designated No. T. 1, effective April 11, 1893. We have caused comparison to be made upon a somewhat different basis between this tariff and the tariff of June 25, 1898.

It will be remembered that many of the differentials in the commodity rates established by the tariff of 1898 are exactly 50 cents per hundred pounds, and that the average differential is said to about equal that amount. There are in the tariff of 1898 but 29 commodity rates in which the differential exceeds 50 cents, while in the tariff of 1893 there are 163 such cases.

In the tariff of 1898 certain commodities are given one rate in carloads and another in less than carloads, certain other commodities take only a less than carload rate, the same rate being applicable to any quantity, while still other commodities take only a carload rate and move in less than carloads under the proper class rate, and this last arrangement is one of the substantial grounds of complaint. A comparison of the two tariffs in respect to these three classes develops the following results: Number of commodity rates applying to both C. L. and L. C. L. shipments 45.4 per cent in 1898; 48 per cent in 1893. Number of commodity rates applying to less than carload shipments only, being the same therefore for both carloads and less than carloads, 1898, 36.6 per cent; 1893, 35 per cent. Number of commodity rates applying only in carloads, 1898, 18 per cent; 1893, 17 per cent.

Certain witnesses also testified that the differentials as ap-
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plied to their business were as great or greater in 1893 than in 1898. From the foregoing comparison of the tariffs, from the testimony of these witnesses and from a cursory examination of the tariffs themselves, we find that the differentials established by the tariff of June 25, 1898, are not greater, and are probably somewhat less than those established by the tariff of 1893.

When, however, these tariffs are compared with respect to the varied commodity rate a striking difference appears. That schedule in which these rates are most attacked is the hardware schedule. Under the tariff of 1893 all articles of hardware, except silver or nickel plated, took the same terminal commodity rate, which was \$1.69 L. C. L. from the Missouri River, and all articles of hardware could be shipped in mixed carloads at a rate of \$1.03 from the Missouri River. Under the tariff of 1898 the various articles of hardware are thrown into nine different groups, taking rates which range from \$1.50 to \$3. There are but five carload rates ranging from \$1 to \$1.25, and practically no mixing of carloads is possible.

The number of articles which could be shipped in mixed carloads under either tariff is small, but we are inclined to think that it is somewhat less under the tariff of 1898 than under that of 1893, considered as a whole.

The changes effected by the St. Paul Supplement are mainly confined to articles ordinarily handled by wholesale hardware houses, although some others, like paints and oils, are included. In some instances the differentials between carloads and less than carloads are reduced, but the principal alterations are in the varied commodity rates. Very many of these rates are reduced, the effect being to make the number of groups five instead of nine and to give those articles which would naturally be shipped in the same package the same rate. The privilege of shipping in mixed carloads is not much, if at all, enlarged.

An important question arises as to the effect of these differentials upon the public. The complainants contend that, by creating an unfair advantage against the jobber of the middle west, they exclude him from the Pacific Coast, and thereby restrict the market in which the retailer can purchase and enhance the price to the consumer. Several merchants engaged in retail trade in California were introduced by the complainants, and

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their testimony tended to show that under the operation of the tariff of 1898 the market in which they could purchase, especially the heavier and more bulky articles, had been largely confined to the Pacific Coast; that prices had been advanced to them, and therefore by them to the consumer. In this connection it must be remembered, however, that this tariff worked a general advance in transcontinental rates. This effect, if the differential had remained the same, must have been to advance the price of many commodities upon the coast, since the freight rate is an important factor in the cost of most articles there. It also appeared that at this time there was a general increase of prices at the factory upon most commodities.

The testimony of the defendants showed that there was active competition between the coast jobbers. Over \$200,000,000 are invested in the jobbing business in San Francisco alone and \$75,000,000 in Portland. Almost all cities of considerable size, like Los Angeles, Sacramento, San Francisco, Seattle, Portland and Tacoma support several jobbing houses in each of the trades which were represented upon this hearing. There was some claim that these houses agreed upon prices, but the testimony failed to show that, except with respect to certain articles upon which the manufacturer fixes the selling price. Competition from the middle west is active and aggressive throughout all this territory. It was in testimony that 50 per cent of the jobbing business in the hardware trade, that being the line of business most earnestly demanding relief, in Southern California was transacted by houses east of the Missouri River and 25 per cent in the northwest. The testimony does not show the proportion in what may be termed central California territory, but the attorney for the Pacific Coast jobbers stated that this was from 25 to 40 per cent, and this was not controverted. Middle-west competition in all lines represented before us has very much increased in the last ten years, especially since the breaking out of the rate war in 1894. It has not decreased since the putting in of the tariff of 1898. Since then middle west jobbers have made upon most articles a freight allowance of 50 cents per hundred pounds, and have probably found this necessary to retain their trade. It was suggested that this was merely a temporary expedient resorted to for the purpose of retaining trade

in that section, but not to be continued permanently. It appears that houses in the middle west habitually pay these freight allowances in many other parts of the United States where they transact business; it further appears that notwithstanding this expense the business in California is a profitable one. Under these circumstances we can hardly suppose that these houses would withdraw from that territory rather than continue the payment of such allowances. From everything in the case we should expect that competition with the middle west jobbers would continue active under present conditions in this territory.

It should perhaps be noted in this statement of facts that commercial organizations in the east generally favor the contention of the complainants, while commercial organizations upon the Pacific Coast as a rule protest against any change in the present tariff, although to this there were several individual exceptions.

CONCLUSIONS.

The complaint in this case attacks the system of rate-making in vogue upon the Pacific Coast. What that system is appears in the findings of fact, and is well understood by all persons having an elementary knowledge of the situation. The rate from an eastern point like St. Louis is lowest to the so-called "terminal" upon the coast. Going east from the terminal point the rate increases until limited by the so-called "intermediate" rate. This produces a higher rate at the intermediate point through which the traffic passes to the terminal point and compels the St. Louis merchant, although nearer in distance, to pay more for the transportation of his merchandise. He insists that his rate to the nearer station ought to be no higher than to the more distant point.

While this question was put in issue by the complaint, it was not referred to, except incidentally, in the testimony, nor urged upon the argument. It is not properly before us for decision, nor if it were are there any facts in this record upon which it could properly be decided. The courts have apparently held, and this Commission has recently several times said, that in determining what, if any, higher charge to the intermediate point

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is lawful all the facts and circumstances must be considered. In this case we have merely the fact of water competition which justifies a somewhat lower charge at the more distant point, and the tariffs themselves. The omission to consider this question must not be taken as an approval of that situation. So far as can be judged from a mere inspection of the tariffs, these intermediate rates are in many instances unduly discriminative, but certainly nothing is to be gained by the expression of an opinion not based upon a knowledge of all the facts.

The complaint also attacks the scheme of transcontinental rate making in force east of the Missouri River as applied to west bound rates. That system differs radically from the method followed upon the Pacific Coast. While upon the Pacific Coast the rate is lowest to the terminal at the ocean and increases toward the interior, in the east the rate from the seaboard does not increase as we proceed inland, but remains the same. This produces what is known as the blanket system of rates. The first class rate from New York to San Francisco is \$3 and the same rate applies from St. Louis. Commodity rates follow the same rule so that generally speaking rates both class and commodity to Pacific Coast terminals and points basing upon such terminals are the same from all points east of the Missouri River. This St. Louis declares to be unjust; being one thousand miles nearer San Francisco than New York it insists that it should be given the benefit of that advantage in distance.

The higher rate to the interior point in California is justified by the carriers upon the ground of water competition, the theory being this: Water competition between New York and San Francisco establishes a cheaper rate than could reasonably be exacted from the rail carrier. Merchandise at New York can be taken by water to San Francisco at the low water rate and thence carried by rail to an interior point for the water rate from New York to San Francisco plus the local rate from San Francisco to the interior point. If the rail carrier engages in this business it must meet the rate thus established by water at San Francisco, and by water and rail at the interior point. It is claimed that the carrier may at his election meet this competition and make its rates accordingly. It may therefore charge to the interior point a rate higher than the terminal rate by the

local back, until a point is reached at which the rate so formed is more than a reasonable rate. This right upon the part of the carrier may perhaps be subject to certain qualifications and limitations, but generally speaking this is the theory upon which certain rates upon the Pacific Coast, which have been declared not in violation of the Act to regulate commerce, are constructed.

Now in theory the converse of this proposition would be true when applied to the point of origin in the east. Water transportation fixes the rate from New York to San Francisco. Pittsburg is four hundred miles west of New York. A commodity can move from Pittsburg to San Francisco in two ways; it may go directly by rail, or it may go by rail from Pittsburg to New York and from thence to San Francisco by ship. If it goes by rail and ocean manifestly the rate should be higher from Pittsburg than from New York, although Pittsburg is nearer San Francisco, since carriage by that route involves the rail haul from Pittsburg to New York. Applying this principle of water competition in the east exactly as it has been applied upon the Pacific Coast, rates to terminal points from the east would be lowest from the Atlantic seaboard and would gradually increase toward the interior until some point was reached at which the rate so constructed equaled a reasonable rate by the direct rail route. If that theory of rate making which has been sanctioned by the Courts and by the Commission in some cases were applied to this territory east of the Missouri River the rate from St. Louis to San Francisco would be, not lower than that from New York, as the complainants insist, but higher, unless the direct rail rate from St. Louis to San Francisco ought reasonably to be less than the rate established from New York by water competition.

That the same system is not in force in both the east and the west is due to differing conditions in those sections. Upon the Pacific Coast the great cities and the strong commercial interests are located at the seaboard. There are no interior towns of sufficient strength to insist upon a change of this policy, and apparently there never can be so long as the present system continues in force. In the east this is otherwise. Formerly manufacturing was mainly done upon the Atlantic seaboard, but to

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day great cities have grown up and great commercial enterprises have developed in the middle west, and these demand an entrance to the markets of the Pacific Coast in tones which cannot be disregarded.

Still more important is the situation of the carriers themselves. Those lines which distribute upon the Pacific Coast control the adjustment of rates into that section, and their interests are united to maintain the present system. Indeed it is declared that to reduce intermediate rates to a level with terminal rates would bankrupt these lines, and it certainly would have a most serious effect upon their revenues. In the east we find many important systems beginning at the Missouri River or in the middle west. It is for the interest of these systems that traffic should originate at the eastern termini of their respective lines. Not only do they obtain more for the transportation of traffic so originating than they obtain from their division upon traffic originating farther east, but they also build up the industries of that locality and therefore remove these from the sphere of water competition. Moreover the traffic which the eastern connections of the transcontinental lines carry farther east is insignificant in amount and in revenue returned in comparison with the whole amount of their traffic. From these various causes it has transpired that the low rate which water competition establishes from New York has been extended to all points east of the Missouri River.

The Commission in a very recent case has examined and passed upon this same question. *Kindel et al. v. Atchison, Topeka & Santa Fé Railway Co. et al.* — I. C. C. Rep. —.

In that case the city of Denver alleged that by virtue of its location it was entitled to a lower rate to Pacific Coast terminals than the rate from points on the Missouri River and east. When the complaint was brought most rates were higher from Denver than from the Missouri River. The only fact upon which Denver based that claim was its location; being one thousand miles nearer San Francisco than Chicago and nearly two thousand miles nearer San Francisco than New York, it insisted that it was entitled to a better rate. The Commission held that this did not necessarily follow; that while Denver was nearer in geographical miles it was not of necessity nearer in transportation

units. The actual cost of transporting merchandise from New York to San Francisco by water was probably materially less than the cost of carrying it by rail from Denver to San Francisco. We said that if these carriers extended the low water rate of New York west to the Missouri River they must carry it still farther to Denver, but that we could not affirm upon the mere score of distance that the rate from Denver should be lower. We are satisfied with the disposition of that question in that case, and it must control the case before us.

To avoid any misapprehension it should be said that we did not decide in that case, and do not decide in this case, that circumstances and conditions might not be such as to require a lower rate from the nearer point. If in this case the industries of St. Louis and the middle west showed that they were, by this adjustment of tariffs, excluded from the markets of the Pacific Coast their complaint might merit different consideration. But such is not the fact; on the contrary it appears that in recent years under the influence of this rate the industries, both manufacturing and jobbing, of the middle west have made steady gains upon the Pacific Coast. To-day of all commodities transported into that territory which originate east of the Missouri it is estimated that more than 60 per cent is from points west of Buffalo and Pittsburg. The only grounds upon which the complainants rest in support of this contention are the greater proximity of the middle west, and the fact that these graded rates were formerly in effect; neither of which entitle them to the relief asked for.

It should also be observed that nothing in this decision would in any way interfere with the right of the transcontinental lines to put in effect, if they saw fit, such a system of graded rates as the complainants ask for. Carriers may or may not at their option meet the low water rate from New York. It is for the manifest interest of those lines beginning at Chicago and points west to maintain lower rates from there than from the seaboard, and if in the future such rates are established they will not be in violation of the Act to regulate commerce.

That branch of the complaint most discussed both in testimony and upon the argument was the alleged discrimination by the tariff of June 25, 1898, against the jobber of the middle

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west in favor of the jobber upon the Pacific Coast. This discrimination is accomplished, according to the complainants, by too wide a differential between carloads and less than carloads, by the application of improper varied commodity rates and by the refusal to permit shipment in mixed carloads. Of these three things the differential was by far the most prominent.

The statement of facts shows that most traffic from the east to the Pacific Coast moves upon commodity rates. Of these rates nearly one-half name for the same commodity a carload and less than carload rate; about one-third apply in any quantity, making no distinction between carloads and less than carloads, while the remaining one-sixth apply to carloads only, leaving the less than carload shipments to move under the class rate. The differential between carloads and less than carloads is all the way from nothing to \$1.50 per hundred pounds, perhaps in instances even greater. Many of the differentials are exactly 50 cents; the complaint alleges that this is the average differential and the case finds that this is approximately true. Are these differentials in violation of the Act to regulate commerce?

In determining this the first inquiry is, by what standard shall the propriety of a differential between carloads and less than carloads be estimated? The complainants urged that the differential was justified largely by difference in expense of handling traffic at terminals, and that this difference when ascertained ought to constitute the difference between carloads and less than carloads; that the differentials thus arrived at would be approximately a fixed quantity, not varying materially with the rate or with the distance. This proposition can hardly be assented to. It really assumes that the proper differential is determined by the difference in the cost of handling the two kinds of traffic. But it appears from the statement of fact that this difference in expense is not confined to terminal points. It costs appreciably more to haul less than carload business than carload. If, therefore, the reason for the standard suggested by the complainants is a valid one, the differential ought to increase with the distance, and therefore ordinarily with the rate.

In *Thurber v. New York C. & H. R. R. Co. et al.* 3 I. C. C. Rep. 473, 2 Inters. Com. Rep. 742, this subject was extensively

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discussed, and it was held that carriers might properly make a difference in their rates between carload and less than carload shipments, but that such difference must be reasonable. The question to be determined with respect to these differentials is their reasonableness.

Such differences between carloads and less are uniformly made in all parts of this country, and in inquiring whether these particular differentials are proper it is natural to ask how they compare with others. Such a comparison was instituted by the defendant carriers, the differentials in question being compared with those in force on west bound traffic from New York to Omaha, from New York to Denver, from Chicago to Salt Lake City and from St. Paul to intermediate points upon the Great Northern and Northern Pacific. The general result of these comparisons was to show that, although the rates in issue are higher and the distances to which they apply greater, the differentials themselves are not much, if any, in excess of those used as standards of comparison. Those between New York and Omaha were about the same; those between the other points named somewhat greater.

The complainants disputed the fairness of these comparisons mainly upon the ground that the rates chosen were made by two and sometimes three combinations, and therefore involve two sets of terminal expenses. This would be true in the cases named with the exception of the rates from St. Paul to intermediate points, and there is probably some force in the objection. We have not verified the statements of the witnesses in respect to this comparison nor much considered the fact itself in disposing of this case. The differential like the rate itself must depend upon local conditions; what would be proper in one section would not be in another; and this is merely referred to as an incident showing that the differentials in question are not abnormal in themselves.

The defendants also instituted a comparison between the tariff in effect when the rate war broke out in 1894 and that of 1898, and the Commission verified and extended this comparison. The result as stated in the findings of fact is that the differentials under No. T. 1 were probably somewhat greater than those established by the tariff in controversy.

This comparison we regard as of somewhat greater importance than the others. It will be remembered that when the transcontinental railway first reached the Pacific Coast all merchandise from the west was transported by water or by the Panama route. The railway immediately began a struggle for this business. After an experience of several years with but little success, the special contract plan was adopted by which an attempt was made to ascertain by actual computation with the shipper the cost of transportation by water of the various articles brought in by him, the rail line making a rate in competition with this ocean rate. When the special contract system went out of operation the rates established by the carriers were upon the basis of those given under these special contracts. They represent, therefore, in a degree what had been found actually necessary to divert this traffic from the ocean to the rail. The carrier insists that the present differentials are justified by ocean competition, and as bearing upon that question it is instructive certainly to know what had been found actually necessary when the carrier was under no obligation to publish or maintain its tariff.

The determination of this question is not, however, controlled nor much influenced by any comparison with present tariffs in different sections nor with transcontinental tariffs of former times. A differential, like the rate itself, should be fixed with a view to the just interests of all parties concerned. Are these differentials reasonable as applied to present conditions with respect to this particular locality and this particular traffic? It is the duty of the carriers to adjust these rates in the first instance, and we should inquire at the outset whether this adjustment is a reasonable one from their standpoint.

In fixing upon a rate or a rate adjustment a carrier may always properly consider the cost of service, and that factor should have great influence with the Commission in passing upon the reasonableness of the carrier's action. If it actually costs these carriers less to handle this transcontinental freight in carloads than in less than carloads we ought not in the absence of a controlling reason to the contrary, to deny to the carrier the right to make a difference in its tariff corresponding to the difference of expense. The defendant carriers have some-

what elaborately estimated the relative expense of carrying this freight in carloads and less than carloads. The nature of that testimony fully appears in the statement of facts, and need not be repeated. We have found that it costs transcontinental carriers approximately 50 per cent more to handle transcontinental traffic in less than carloads than in carloads. The less than carload rate in many of the instances called to our attention by the complainant exceeds the carload rate by somewhat more than 50 per cent, but on the whole we are inclined to think that, on the average, the difference between carloads and less than carloads established by the tariff of June 25, 1898, does not greatly, if at all, exceed the actual difference of cost in the service rendered.

Cost of service is not however the standard by which carriers fix most rates. It was not the standard by which these carriers determined these differentials, and it only comes into this case as an afterthought in justification of a thing which had originated in other motives. Railway rates are usually the result of various kinds of competitive influences; these differentials grew out of certain competitive conditions and their reasonableness must be examined in the light of these conditions.

It was suggested by the complainants that the water competition relied upon by the defendants in justification was largely mythical. Without doubt water competition is made to do most heroic service in many portions of the United States in justifying anomalies in the freight rate, but we are constrained to believe that this competition between the Atlantic and Pacific oceans is not a thing of the imagination, but rather of intense reality with which these rail carriers must deal.

When the rail lines first reached the Pacific Coast all merchandise was brought in by water; at the end of several years the greater portion of it still came by that means. While both the tonnage and the proportion have been largely reduced since, there has been no time when the ocean was not an important factor in determining the rate from New York to San Francisco. Nothing gives stronger evidence of the present vitality of that competition than the fact that men familiar with the situation have been to an enormous expense in providing tonnage for this service which is more than three times the amount carried in
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recent years. From the day the transcontinental railroad touched the Pacific ocean its struggle has been to divert business from sail to rail; and with steamships already in service and the canal in immediate prospect it is certain that this struggle has not ended.

In 1869, when the Central Pacific and Union Pacific began business, goods used in California were mainly manufactured upon the Atlantic seaboard. In order to secure the transportation of these goods the rail lines found it necessary to make a rate, not as low in cents per hundred pounds, but of as great value, all things considered, to the shipper as the water rate. Most rates between New York and San Francisco have ever since been and still are established on this basis. It is idle to say that when wrought iron pipe, for instance, can be transported from coast to coast by water for 35 cents per hundred pounds rail carriers can maintain a carload rate much above the 75 cents now in force.

But assuming this to be so, in just what way does water competition produce the wide difference between carloads and less than carloads? An examination of the facts shows that while a distinction is made in the water rate between smaller quantities and larger that difference is less, indeed materially less, than the differentials complained of. Now supposing the carrier must make a low rate to meet this ocean competition why need the difference between his carload and less than carload rate be greater than that made by the ocean. This inquiry is rendered especially pertinent by the fact that the Panama route makes the carload rate 20 per cent less than the rail and the less than carload rate 30 per cent, thus recognizing the fact that ordinarily the railroad can maintain a less differential than the water.

In order to understand the claim of the defendants in this respect it is necessary to have clearly in mind the entire situation. Traffic transported from the east to the Pacific Coast at the present time is controlled either by jobbers in the middle west or by jobbers upon the Pacific Coast. The middle west jobbers send their merchandise almost entirely in less than carload lots. In the very nature of the case that freight is not subject to ocean competition, and the carrier may safely disregard such

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competition in the making of these less than carload rates which apply to that transportation.

The Pacific Coast jobber upon the other hand brings his supplies from the east to his warehouse almost entirely in large lots. It is found that 90 per cent of his entire rail traffic moves in carloads. Of the remaining 10 per cent a considerable part is in the nature of emergency orders, which require quick delivery and which could not therefore be transported by water. In order to obtain the business of the Pacific Coast jobber it is necessary that the rail carrier make an attractive carload rate, the less than carload being of comparatively little importance. There is a certain amount of less than carload traffic which can and does move by water, as the statement of actual movements by clipper ship and the tariffs of the Panama route show; but broadly speaking the less than carload business is, from its point of origin, not subject to water competition; the carload freight is that for which the rail carrier mainly contends with the ocean; hence water competition tends to produce a wide difference between the carload and less than carload.

There is still another reason. The fact that business originating in the middle west almost of necessity moves by rail, immediately suggests the thought that it would be for the ultimate interest of those lines which begin in the middle west to make such rates as would enable all business to be done by that section. Up to the present time two causes have prevented this. First, it has been in the interest of certain lines, notably the Southern Pacific, that traffic should move from the Atlantic seaboard, and second, the Pacific Coast jobber has objected to being extinguished. His warehouse is by the sea, and if the rail line makes a rate which will not permit him to bring traffic by rail and do business against his eastern competitor he must and he will turn to the ocean for relief. This may be disastrous to him; it proved to be so when tried; but it is even more disastrous to the railway. For the purpose therefore of maintaining peace, and at the same time obtaining a large part of the business of the Pacific Coast jobber, the railroad aims to maintain a differential which will enable that jobber to do business.

We have next to consider the interest of the wholesaler upon the coast and in the middle west, and it is really the conflicting
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claims of these parties which lie at the bottom of this controversy. The jobber upon the Pacific Coast insists that he rests under certain disadvantages in comparison with his eastern rival which render it extremely difficult for him to maintain himself without some advantage in the freight rate, and that his natural advantage of location entitles him to this preference. The alleged disadvantages have been fully stated in the findings of fact. They mainly spring from the limited territory to which his operations are necessarily confined. Owing to the adjustment of freight rates he cannot operate in any event more than about three hundred miles to the east, and the same distance north or south brings him to a point where both his eastern rival and his local competitor have an advantage in the rate. The field which is open to him is narrow, estimated in square miles, and even narrower when estimated by the population which he can reach. From this it results that the volume of his sales is small and the expense of transacting business large in proportion; still further his location and the manner in which he obtains his supplies force him to carry a disproportionately large stock. The Pacific Coast jobber finds it extremely difficult to maintain himself against his eastern rival without some advantage in the transportation charge, and we have seen that his location upon the seaboard by opening two avenues of communication gives him a certain advantage in this respect.

Most of the limitations under which the jobber upon the Pacific Coast works do not attach to the jobber in the middle west who is competing upon the Pacific Coast. His territory is extensive and the volume of his sales large. He goes east to New England, south to the Gulf of Mexico, north to the Dominion line, west 1,700 miles, and whether he does or does not cover this narrow strip west of the 115th meridian in no way affects his general prosperity or his continued existence. This is true not of every jobber in the middle west but of those great houses in whose interest this complaint is prosecuted.

The controversy has been conducted by the railways and the two sets of wholesalers already referred to, but it must not be decided with reference to their necessities or desires alone. There is another interest seldom represented upon these hearings, but always to be considered by this Commission, and that

is the consumer. No adjustment of rates made in the interest of carriers or of wholesalers should be permitted if it antagonizes unduly the public welfare. Considering the question before us as an economic problem two things should be secured. First, these commodities should be brought to the consumer at the least possible expense. Second, in both transportation and distribution unfettered competition should be maintained, thereby securing to the consumer the benefits to which he is entitled.

The greater part of the supplies consumed upon the Pacific Coast originate twenty-five hundred miles from the point of consumption, and these supplies should be transported that twenty-five hundred miles in the cheapest manner. Waste is always expensive; if the railways are required to carry this merchandise in an extravagant manner that extravagance is finally borne by the public. We have seen that the actual cost of handling this traffic in less than carloads is 50 per cent greater than the cost of handling carloads. It seems probable, therefore, that the cheapest way in which these supplies can be taken across the continent and distributed to the consumer is by transporting them in solid carloads from the factory to the warehouse upon the Pacific Coast and thence distributing to the retailer in less than carloads, although the effect of this may be somewhat diminished by the back haul from the wholesaler to the interior point which is not performed to the same extent where goods are sent across the continent in less than carload shipments directly to the store of the retailer. It would in our opinion be unfortunate from an economic standpoint to establish a condition which would require distribution entirely or mainly in less than carload lots from the middle west.

It is urged however that this tariff in effect stifles competition, thereby increasing the price to the consumer. It is alleged that this is done in two ways, first, by discouraging water competition and thereby permitting the maintenance of too high a rate, second, by restricting the market in which the retailer can buy, thus increasing the price to him and his customer.

The rate war of 1894 originated in the desire of the merchants of San Francisco to obtain a lower freight rate. The means which they employed was ocean transportation, and in that contest the jobber of the Pacific Coast was upon the side

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of the ocean. As a matter of retaliation rail lines gave to the eastern jobber every facility for entering Pacific Coast territory. Not only was the general level of rates reduced but differentials were abolished and the privilege of mixing shipments increased.

The result as has been noted in the statement of facts was disastrous to both parties. The San Francisco jobber lost in territory and in profits; the railways suffered severely in the diminution of revenues. At the expiration of three years both parties were anxious for relief and were seeking some ground of compromise. This was the genesis of the meetings at Del Monte and Milwaukee, and it was to effectuate this purpose that the tariff of June 25, 1898, was promulgated. The railway desired to retain its business at higher rates; the jobber upon the coast desired to retain his territory and increase his profits. There can be no doubt that the railways understood that the jobbers would patronize their lines at the higher rate, and that the jobbers had given them so to understand. There was no definite agreement of this sort, nothing like that involved in the old special contract system. It was rather a result growing out of the mutual interest of both parties.

The practical interpretation of this understanding has been to enable the railways to retain just about the same proportion of traffic at materially better rates. The tonnage brought from the Atlantic to the Pacific Coast since June 25, 1898, has not differed greatly from that of two or three years before. It ought perhaps to have increased, for the Spanish war had dealt this traffic a severe blow both by increasing the rates of insurance and by decreasing the supply of ships, and with the close of that war this traffic might be expected to recover. Clearly it is likely to do so in the future. The tonnage moving during the present year will probably greatly surpass that of the last six or seven years and within two years to come will be greater than at any time since 1880. We find a disposition upon the part of the coast jobbers to patronize the ocean whenever a rate is offered which is decidedly advantageous. It must be remembered that the effect of the rate war of 1894 was to depress ocean as well as rail rates.

Rail lines could not probably increase their carload rates,

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and if we were to order a reduction of these differentials that would result in a reduction of the less than carload rate. Another result would be to compel the coast jobber to seek cheaper means of transportation which might finally lead to a further reduction of the carload rate and to the same disturbances which have previously occurred. We have already said that the reasonableness of the less than carload rates considered by themselves is not questioned. Ought we then to order this reduction? If the effect of the present tariff, owing to any understanding between the rail lines and the coast jobbers, was to extinguish or seriously cripple ocean competition it would be our plain duty to interfere; but in fact this competition seems to be in a prosperous state. If the effect were to maintain a scale of rates unreasonably high, our duty would be equally plain; but there is no suggestion that this is true of the present terminal rates. We are not unmindful of the fact that a reduction in the terminal rate works a corresponding reduction at all points which base upon that rate; nor do we overlook the fact, although there is no mention of it in this case, that the earnings of transcontinental lines indicate that some reduction in their rates might properly be made; but we are of the opinion that if any such reduction is to take place it should be in the high and discriminating intermediate rate rather than in the already extremely low terminal charge. Competition is not healthy when it becomes destructive to the competing parties. It was said upon the argument that this present adjustment provided a state of "equilibrium" under which both the rail and the water, the east and the west could fairly compete. So far as the testimony shows we are inclined to think that this is true of competition by water.

It is said that this tariff is unlawful because it excludes the jobber of the middle west from this territory, gives to the wholesaler upon the Pacific Coast a monopoly, restricts the market in which the retailer can buy and thereby enhances the price to the consumer. The territory of the Pacific Coast jobber is extremely limited, and he is inclined to insist that he should be left in the peaceable possession of that territory; that the jobber of the middle west whose territory extends a thousand miles to the east and seventeen hundred miles to the west ought not

to covet the narrow strip which lies beyond the 115th meridian. We do not accede altogether to this view. The adjustment of rates upon the Pacific Coast is such that it confines the local jobber to certain spheres making them almost omnipotent within those spheres; and for this reason competition from the east, which, under this same adjustment of rates, tends to diffuse itself over the whole coast, is important. If there be no controlling reason to the contrary, rates should be so adjusted as to permit the operation of the wholesaler from the middle west throughout all this territory.

An examination of the statement of facts, where we have attempted to set down in some measure the various advantages and disadvantages enjoyed by the jobbers upon the Pacific Coast and jobbers in the middle west in entering this territory will show the utter impossibility of determining by any *a priori* process whether, under the tariff in question, the jobber of the middle west can well engage in that business. Nor is there any necessity of attempting to do so. Three and one-half years had elapsed between the putting in effect of that tariff and the final submission of this case, an ample period within which to observe the actual result upon the division of this business. It was practically conceded that there had been no diminution in the amount of business transacted by the jobbers of the middle west, although there had not been, perhaps, that increase which would otherwise have occurred from the general improvement of business conditions. It was further admitted that this business was still done at a profit although this profit was said to be less than it ought to be. Throughout the whole territory the eastern jobber is a positive and aggressive factor. Of the lines of trade embraced in this proceeding probably 50 per cent of the entire sales of Southern California is by the eastern jobbers, 25 per cent in the northwest and from 30 to 40 per cent in central territory. It cannot be said that any adjustment of rates which permits the transaction of approximately one-third the jobbing business from the east excludes the wholesaler of that section.

It appeared that this business had been retained by the payment of freight allowances, but it also appeared that the payment of such allowances was not unusual at points distant from the location of the jobbing house, and that notwithstanding this

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expense the business had been remunerative. It is worthy of remark that when the differentials were reduced in the north-west by the St. Paul Supplement the effect was, not to decrease the price to the retailer, but to stop the payment of the freight allowance.

While the complaint refers to particular rates, and while some of the testimony made similar reference, this was mainly by way of illustration. The case as submitted referred to the lawfulness of this tariff as a whole, the propriety of the general principles which underlie its construction. It was said that these differentials averaging 50 per cent per hundred pounds were too wide; that the motives which induced the tariff were wrong, and that the general effect of the tariff was to discriminate against the jobber of the middle west and to injure the consumer upon the Pacific Coast.

Viewing the case in this broad sense we find that these differentials are not abnormal when compared with others in different parts of this country at the present time; that they are not greater than those in effect under the west bound transcontinental tariff of 1893, and not greatly disproportionate to the actual difference in cost of service. Considering them with respect to their bearing upon the parties immediately interested, namely, the carriers and the two classes of jobbers, we find that they conserve the interests of the carrier, that they give to the jobber upon the Pacific Coast a measure of advantage to which he is perhaps entitled by his location, and which he must probably have if he is to continue to exist, while they permit the jobber of the middle west to transact a considerable amount of business in this territory at a reasonable profit. Viewed as an economic problem, the tariff fosters that method of distribution which is probably the cheapest upon the coast, and at the same time permits reasonable competition and thereby secures to the customer the full benefits of such competition. This situation is in some sense the outgrowth of past experience. It is satisfactory to most interests upon the Pacific Coast, and we are not disposed to find fault with the adjustment of rates as a whole.

While, however, we cannot condemn this tariff as a whole upon the grounds put forward by the complainants, we are of the opinion that many of its details are in violation of law.

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Over four hundred commodity rates apply to carloads only, leaving the movement of these commodities in less than carloads to be governed by the class rate. This produces a differential which even under the peculiar circumstances of this traffic is in many cases excessive, provided there be any commercial reason for a corresponding less than carload rate. In some instances there is none. Coal, for example, moves usually in carloads and takes a low commodity rate. What little movement occurs in less than carload lots is not competitive with carload shipments, and may well be governed by the class rate, although the difference between the two would otherwise be undue. Many similar instances will readily occur, but we are impressed from an inspection of these schedules that there are still many other instances in which the difference is altogether too great.

It is impossible to fix any standard by which these differentials shall be determined, for the reason that circumstances often render the application of a greater differential proper in one case than in another. This record finds that many of the commodity rates show a differential of 50 cents per 100 pounds, and it is said that this may be termed the average differential; it further finds that the cost of handling this less than carload traffic exceeds the cost of handling carload traffic by about 50 per cent. We are inclined to think that a differential which is at once more than 50 cents per 100 pounds and more than 50 per cent of the carload rate is *prima facie* excessive. We do not mean that every differential may lawfully equal this, nor yet that every differential which exceeds this is unlawful, but that a differential exceeding this requires special justification.

We also think that the varied commodity rates, especially in the hardware schedule, are to some extent unlawful. The tariff of 1898 applies nine different rates to the articles in this schedule. The transcontinental west bound tariff of 1893 threw all articles enumerated in that hardware schedule into two classes. If water competition or any other cause inhering in the transcontinental situation requires the present division of rates it had not become manifest in the twenty-four years preceding the publication of that tariff. The St. Paul Supplement reduces the number of groups from nine to five, but

upon the other hand if the articles specified in the hardware schedule of the tariff of June 25, 1898, were shipped under the Official Classification they would take eight different rates, and nine under the Western Classification. We are also impressed that these schedules unduly prevent in some instances the shipment of articles of the same class in carload lots at carload rates. It is difficult to understand why sheet iron of all thickness should not be shipped together in carloads.

It is one thing to pronounce a tariff wrong, quite another to say what will be right. While we are clearly of the opinion that many of these differentials are too great, that the varied commodity rates in the hardware schedules, and perhaps in some others, should be readjusted, and that in some instances greater latitude should be given in the shipment of practically the same articles in carload lots, we have no facts before us from which we can intelligently determine what ought to be done in specific instances. The great mass of testimony in this record went to the general aspects of the controversy rather than to details. We have concluded, therefore, to set this case down for further hearing at St. Louis on the second Tuesday of February, 1903. This will allow time for the carriers to readjust their tariffs in accordance with the suggestions in this opinion. If before that date the complainants notify us that no further hearing is desired, the complaint will be dismissed; otherwise we will at that time require the attendance of the traffic officials of the various transcontinental lines and endeavor to obtain such information from other sources as will enable us to make an intelligent order in the premises.

As previously stated, the question as to the higher intermediate rate, although raised by the complaint, was not litigated upon the trial. We have thought best to keep this question open also for further hearing. The Commission will not of its own motion proceed in that branch of the case, but the complainants have leave to do so, if they desire.

FIFER, *Commissioner*, dissenting:

I concur in the opinion to the extent of deeming it inadvisable to attempt, without further investigation, a settlement of the great questions involved in this continental situation.

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The undisputed facts involve three propositions: the postage stamp or blanket rate for the whole eastern territory from the Atlantic Coast to the Missouri River; the wide difference between the carload and less than carload rate on west bound traffic, and, the system common to all, the Western Mountain Territory of making the rates from the east to any intermediate point by adding to the through rate to any Pacific Coast Terminal the local rate back to the intermediate point.

Concerning the first, while it may be conceded that the so-called blanket rate is too firmly established, and has proved in too many instances of a great utility and profit to both the road and its patrons to warrant me in denouncing it, yet I am firmly of opinion that, carried to the extent of above a thousand miles, as in this instance, on practically all the schedules, is such an exaggeration of the system as to work serious injustice to the jobbers of the middle west by robbing them of the natural advantages of geographical location to which they are as much entitled as are points located upon the Atlantic Coast, which for that very reason are favored by rates that are denied to those situated farther west.

For this reason it seems to me the only solution of the problem which will be fair to all parties is the graded rate, perhaps not in the proportions formerly in force: but that, at least, recognizes the advantage of proximity to the western market which Pittsburg enjoys over New York, Chicago over Pittsburg, and the Missouri River over Chicago.

There seems to me to be just ground for protest against the differentials between carload and less than carload rates. These differences have been within a comparatively late period so much increased as to lead to the inference, inevitable to me, that they have been established with deliberate intention to discourage less than carload shipments. To what extent these differentials should be modified, if at all, must depend upon a wider inquiry and deeper investigation than we have been able to accomplish at this stage of the present case.

The system of rate-making which establishes rates for intermediate points by a combination of the through rate to the coast terminal point and the local rate back to destination has much in its favor, as water competition is held to justify even unrea-

sonably low through rates, and as the freight thus favored is secured by the railroads by a rate which is to prevent its carriage by water—all freight, in theory, is treated as if it reached the coast by water and takes its place thereafter as local freight east—instead of through freight west.

But there comes a situation and a locality when this theory of rate-making must break down of its own weight, and with a blanket rate from the east reaching to the Missouri River, the short middle west haul, say from the Missouri River to Ogden, is out of all proportion to the haul from the Missouri River to New York, from New York to San Francisco by water and back by rail to Ogden. Upon its face such a condition carries suspicion, and it requires some explanation to justify a situation where a haul practically a thousand miles shorter at each end is higher than the through rate. Just how far the combination through rate with the local back may extend under these circumstances will depend upon where it meets a reasonable rate from the east, and on that question in this case the evidence is incomplete; we having developed only enough to bring me to fear that the schedules in force are discriminating and unjust.

The opinion finds that the Pacific Coast jobber carries his business not farther east than the 115th meridian, or about 300 miles from the coast, and I am inclined to believe that the evidence fairly sustains that finding. But an examination of the tariffs on file in the office of the Commission shows that the zone of their operations may be much wider, the combination rate basing on Pacific Coast terminals extending as far east as 800 or more miles in numerous instances.

For many articles of hardware, such as axes and other edged tools, picks and mattocks, bar, rod and sheet iron and steel, billets, blooms, ingots and scrap iron, the combination rate extends east on the Southern Pacific Railroad (Ogden line) to various points from Millis, Wyo., 828 miles east of Sacramento, to Cheyenne, Wyo., 1,239 miles east of Sacramento, except on picks and mattocks, on which the combination rate equals the intermediate rate at Rye Patch, Nev., 273 miles east of Sacramento. On the Southern Pacific (El Paso line) the combination rate extends east to various points from Strauss, N. M., 797 miles east of Los Angeles, to San Elizario, Tex., 833 miles.

east of Los Angeles, except on picks and mattocks on which the combination rate equals the intermediate rate at Montezuma, Ariz., 400 miles east of Los Angeles. On the Great Northern line the combination rate extends east to various points from Troy, Mont., 579 miles east of Portland, on picks and mattocks, to Wagner, Mont., 1,042 miles east of Portland, on billets, blooms, etc. On the Northern Pacific the combination rate extends east to various points from Noxon, Mont., 662 miles east of Portland, on picks and mattocks, to Central Park, Mont., 1,009 miles east of Portland, on billets, blooms, etc. On the Santa Fé System the combination rate extends east to various points from Amboy, Cal., 226 miles east of Los Angeles, on picks and mattocks, to Albuquerque, N. M., 889 miles east of Los Angeles, on billets, blooms, etc.

Thus it will be seen that while the business of the coast jobber may, through his own volition or methods of transacting business, be confined to territory lying west of the 115th meridian, there is nothing in existing tariffs that would in any way so limit his field of operations. So far as these rates are concerned, he can apparently do business as profitably as far east as the points named as he can in the territory lying between the 115th meridian and the Pacific Coast. It should be noted that the differences between the carload and less than carload rates complained of in this case serve, under this method of making rates to the intermediate point, to greatly enlarge the Pacific Coast jobber's sphere of operations, and that he will sooner or later take full advantage of the opportunity thus afforded is to be expected.

It seems to me necessary that in the further investigation to which the opinion in this case tends, the feature of reasonable rates for the whole so-called Western Mountain Territory should be made a main issue that the inquiry may develop whether or not the zone of combination rates should not be narrowed to points nearer the coast, and thus remove not only a burden on our commerce but an apparent discrimination that invites criticism, even if justifiable.

IN THE MATTER OF RATES AND PRACTICES OF
THE MOBILE & OHIO RAILROAD COMPANY IN
THE TRANSPORTATION OF GRAIN TO VICKSBURG, MISSIS-
SIPPI, SHIPPED FROM OR THROUGH ST. LOUIS, MISSOURI,
AND EAST ST. LOUIS, ILLINOIS.

Decided January 31, 1903.

A published tariff regulation permitting grain to be shipped through from point of origin to final destination with a stop-over privilege in East St. Louis for cleaning, sacking or other legitimate purpose, the shipment covering a proportional or balance of a through rate from East St. Louis, is not shown to be objectionable in this case, but that part of defendant's tariff regulation which provides that grain may be shipped to East St. Louis on a local rate and forwarded as a new shipment from that point on a 12-cent proportional rate to Vicksburg, Miss., and common points disregards the higher 15-cent local rate from East St. Louis to those destinations and is not in accord with the doctrine announced by the Commission in *Re Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the A. T. & S. F. Ry. Co. et al.*, 7 I. C. C. Rep. 240.

E. L. Russell and *R. P. Williams* for Mobile & Ohio R. R. Company.

REPORT AND OPINION OF THE COMMISSION.

FIFER, *Commissioner*:

The Commission, having under consideration certain complaints respecting discriminations in grain rates from St. Louis, Missouri, and East St. Louis, Illinois, to Vicksburg, Mississippi, did, on its own motion, on April 18, 1902, enter an order that an inquiry and investigation into the rates and practices of the Mobile & Ohio Railroad Company in the transportation of

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grain shipped from or through St. Louis, Missouri, and from and through East St. Louis, Illinois, be instituted. In pursuance of that order, hearings were held at St. Louis, Missouri, on April 25 and May 17, 1902.

The basis of the complaint is that for a month preceding its filing, a certain commission company of St. Louis, Missouri, had been quoting prices for the sale of corn and oats in Vicksburg, Mississippi, with which no other dealers could compete.

It was alleged that the transportation of grain in that period from St. Louis and East St. Louis to Vicksburg had been almost exclusively over the Mobile & Ohio Railroad; that as the markets were alike open to all dealers it was apparent that if advantages were enjoyed by any particular individuals such advantages were secured through the transportation rates; that the shipments in many instances were prepaid and the billing showed no rate; that the agents of the defendant road located at Vicksburg, when inquiry was made, disclaimed information concerning any secret or discriminating rate. The facts regarding these matters could only be secured by an investigation, which the Commission at once ordered, for the purpose of locating the discrimination and affording such relief as it was authorized to enforce.

The facts as established by the testimony, so far as material to the issue, were as follows:

The regularly published and established rate at the time of the filing of the complaint was on grain from East St. Louis to Vicksburg, 15 cents. No through rate was shown in any tariff filed with the Commission, nor was any such tariff posted in the offices of the railroads engaged in such transportation. It appears also that the agents of the railroad company at Vicksburg had no authority to quote any other rate.

But there was in existence a method of shipment on a re-consignment or stoppage-in-transit rate, by which grain shipped from parts of Kansas, Missouri and Illinois might be consigned to Vicksburg on a through rate. On arrival at St. Louis this grain might be sold, or it might be stored in elevators and at a future date shipped on to Vicksburg on payment of the balance of the through rate. This balance was in most cases 11

cents per 100 pounds, but the agents of the railroad company were not notified by any published schedule, nor was any such schedule filed in the office of the Interstate Commerce Commission. The information was conveyed only by means of a circular of instructions of limited circulation. The agents at St. Louis were familiar with this arrangement, and with St. Louis brokers and shippers it seemed to be a matter of common knowledge, but distant agents, even at point of final destination, plead ignorance of the existence of any such rate.

The established rate on corn from St. Louis to Vicksburg of 15 cents per 100 pounds equals 8.4 cents per bushel. The price of the grain on the track at St. Louis about the time of the hearing was 65 to 65½ cents per bushel in bulk; the expense of sacking, with labor and incidental expenses, would add about 2½ cents per bushel, and a 15-cent rate would, saying nothing of profits and commissions, bring the price per bushel to about 76 cents, delivered in Vicksburg; but one commission house doing business in East St. Louis was at that time quoting a price of 73¼ cents per bushel, which could only be secured with any profit by a transportation rate of 11 cents or less per 100 pounds. At the lower cost quoted, 65 cents per bushel at St. Louis, and allowing only 2¼ cents per bushel for sacking, the rate of 11 cents per 100 pounds, or 6.16 cents per bushel, would still make the bushel of corn at Vicksburg cost 73.41 cents, without reckoning profits or commissions, while the quotation for that day was 73¼ cents per bushel.

This, however, does not necessarily prove the existence of any less rate than 11 cents per 100 pounds. A slight margin might be secured through advantages in buying or securing cheaper sacking rates to cover differences so slight.

Through rates from northern points through St. Louis to Vicksburg varied according to points of origin from 16 to 22 cents per 100 pounds, with the prevailing average from Illinois territory to Vicksburg of 16 cents on corn and 17 cents on oats.

In such shipments the grain is billed to Vicksburg and passes through St. Louis. On arrival at St. Louis the grain may be forwarded at once to Vicksburg or it may be placed in an ele-

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vator carrying with it the privilege of subsequent shipment of a chosen point at the balance of the original through rate.

In such case the corn comes to East St. Louis and is placed in an elevator, known as Montgomery B. To reach the elevator the grain is transferred from the initial line by the Wiggins Ferry Transfer Company and a belt railroad of St. Louis and East St. Louis, with nearly a dozen miles of track, ferry boats, barges, etc., which deliver it to an elevator alongside of its track situated on land belonging to the Wiggins Ferry Company.

The transfer charge is one cent per 100 pounds; switching to elevator, or between connecting lines, or between industries in East St. Louis, is one-half cent per 100 pounds. The transfer charge on business going to the southwest is three-quarters of a cent per 100 pounds transfer, which is absorbed by the southern roads, but in the case of grain to Vicksburg nothing is paid by the defendant line; neither switching charge, elevator nor storage, but the balance of the through rate, 11 cents, is apparently received by the defendant line without rebate or diminution.

The grain may be billed through with one bill from origin to destination or it may be consigned through with billing to the junction point only. The through bill is for convenience, though the grain may be transferred to the elevator in either case. If billed through it would read "Atchison, Kansas (or other point, as the case may be) to East St. Louis, Mobile & Ohio from East St. Louis to Vicksburg." If there is no through arrangement with the connecting line whereby the grain is to be delivered at its final destination, it is billed to East St. Louis at the rate in force, and collection is made from the connecting line usually at the time of delivery. Final settlements, however, between the connecting roads are afterwards made through an accounting department.

The name of the consignee at Vicksburg might or might not appear on either form of billing. On through billing the Mobile & Ohio Company would pay the cost of transfer, the billing of the connecting line coming to it with the cars.

The course of a shipment from Missouri Pacific territory

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would be as follows: The grain is brought in bulk to St. Louis. The car may come with a slip from the Missouri Pacific Railway consigned to Vicksburg, care of Mobile & Ohio Railroad Co. The Wiggins Ferry Company would then take the car across the river and notify the elevator company and under instructions from it place the car at the elevator. Ordinarily the delivering line pays the charges of the ferry company, whose tariffs filed with the Interstate Commerce Commission show a charge on corn of one cent per 100 pounds.

The Wiggins Ferry Company maintains an agency on both sides of the river. The elevator gets weights from the Merchants' Exchange weigher and the Wiggins Ferry Company handles in every pound which the elevator handles out. The grain is now in the elevator where it may remain indefinitely, and it loses its identity as soon as stored.

The grain is for the most part forwarded in sacks. Sacking is a regular business and is carried on either in the elevator or in separate houses. The cost of sacking corn is 2 cents per sack with sack and twine furnished. A 48 or 52-inch sack holds from $2\frac{1}{2}$ to 3 bushels. With labor and incidentals the sacking of corn costs nearly $2\frac{3}{4}$ cents per bushel and will doubtless average one car with another at least $2\frac{1}{2}$ cents.

When a shipper from the elevator is ready to forward a car of grain the records of the elevator are consulted to find some entry of a car of grain corresponding to the amount to be shipped from some point from which the balance of the through rate to Vicksburg would be 11 cents per 100 pounds. As there is apparently no time limit to the extension of the forwarding privilege under which the combination rate may carry the grain, the oldest unused entries are, as a rule, utilized. Blank transfer slips are furnished to the elevator as well as the through connections of the Wiggins Ferry Company.

The elevator company makes out a Wiggins Ferry slip, which is not a copy of the one received from the ferry company and does not call for the original grain, nor does it bear the same date as that of the original ferry company's slip. This slip is marked "paid" and is accepted by the Mobile & Ohio Railroad Company, which proceeds upon the assumption that the

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car has been received from the Missouri Pacific Company. There is no connection whatever between the elevator slip and the Wiggins Ferry slip, except that both cover the same aggregate amount of grain.

The officials of the Mobile & Ohio Railroad Company have access to the books in the office of the elevator company and the railroad company accepts this slip with the consent of the general freight agent. The grain out of the elevator is billed by that company and the road goes entirely by the billing. The Wiggins Ferry bill of lading is delivered with the car, and the Mobile & Ohio Railroad Company bills out and inserts rates, if at all, according to the tariff. It makes no inquiry beyond the transfer slip and accepts the grain inspector's weights. The Southern Weighing Inspection Bureau is understood to have instructions to re-weigh, but it appears not to do this. If the freight to Vicksburg is prepaid, the bill of lading shows no rate; as the transaction is thus wound up, no investigation is made or verification necessary. The slip shows only that the Wiggins Ferry Company had at some time received a carload of grain from the Missouri Pacific Railway Company, starting at a certain point, billed to a certain point on a certain day, which it delivered to the Mobile & Ohio.

The fact that the slip says that grain came from a certain car is no evidence that it did so; it simply represents so much tonnage; and the car may have passed on a year before. When a 11-cent rate to Vicksburg is wanted, the records are gone over and it is found at some time or other a corresponding amount of tonnage has been brought from some point where the rate fits, and which has not been billed out, whereupon a transfer slip representing that amount of tonnage is made out and sent along.

John E. Hall, whose commission company quoted the low price in Vicksburg, was a stockholder, with two other principal stockholders, in the Montgomery B elevator; but from the testimony apparently enjoyed no undue advantage over other northern buyers and southern shippers of grain in St. Louis, save only that his elevator was located upon the tracks of the belt and forwarding lines. He, however, seemed to know of the 11-cent rate. The 11-cent rate was known also to other ship-

pers on 'Change in St. Louis. Other grain shippers of that city testified that they knew of the 11-cent rate and that they never shipped on any other, though always from points within the prescribed territory. It was not shown that either the Wiggins Ferry Company, upon whose land the elevator is situated or the defendant carrier, the Mobile & Ohio Railroad Company, owns any stock or has any interest in the elevator beyond the facilities enjoyed by them as common carriers.

The discriminations here complained of grew out of a custom inaugurated long before the passage of the Act to regulate commerce. It is a custom known as the "stop-over privilege." Some of these privileges have been granted for purposes of manufacture, as milling-in-transit, by which grain is shipped to a distant point on the through rate, but may be stopped at certain intermediate points and there manufactured into flour or other products, and afterwards shipped to final destination in its new form at the balance of the original through rate. Or it may be a stoppage-in-transit for the purpose of "trying the market," as in the present case. Here, for instance, the grain is shipped from northern points of production to a central market and the payment of the rate to that market is made to the initial line. Permission is then given to store the grain for an indefinite period and it is afterwards shipped to its original and final destination at a proportional rate or the balance of the through rate.

Most witnesses were confident there should be some time limit to this stop-over privilege, but differed widely in their opinions as to what that time should be. They varied all the way from ten days to one year and some contended that there should be no limit at all. The testimony in this case showed that grain was billed out of the elevator on way-bills a year or more old, clerks being instructed, it was said, to use the old bills first. Shipments were made in the month preceding the hearing to Vicksburg, on old way-billing, of grain from Missouri Pacific points, which points had shipped no such grain in seven months, and when it was clear the actual movement of grain had been in the other direction. These way-bills in fact had been used during the previous year and for a former crop.

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We feel that the practices disclosed by this record are discriminating and should be condemned. If stop-over privileges are granted for any purpose, all the facts and circumstances connected therewith should be clearly stated in the published tariff, so that the public generally may enjoy their benefits.

The defendant, the Mobile & Ohio Railroad Company, and other roads leading south from St. Louis and East St. Louis, with a view of curing the evil complained of, filed with the Interstate Commerce Commission a through freight tariff, No. 36, effective September 10, 1902, on reconsigned corn and oats from St. Louis and East St. Louis to Vicksburg and common points. This tariff provided for the reconsignment in carloads of corn and oats, minimum weight 30,000 pounds, at 12 cents per 100 pounds, with a time limit of six months for reconsignment. That tariff has been superseded by issues numbered 36-A, 36-B, and 36-C, the last effective October 18, 1902. These tariffs all contain the following provision:

"Traffic subject to these rules is Corn and Oats, consigned locally to St. Louis or East St. Louis and reshipped, or that is consigned through these gateways and accorded the privilege of stopping at St. Louis or East St. Louis for cleaning, sacking, mixture, or handling through elevators, warehouses or railroad yards for any purpose whatever (except inspection in original car under the supervision of the Chairman of the Southern Freight Association)."

That part of the rule which provides that grain may be shipped to East St. Louis on the local rate from the point of origin to that point and thence shipped out again on the 12-cent proportional rate to Vicksburg and other common points seems somewhat in conflict with the doctrine announced by the Commission in *Re Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the Atchison, Topeka & Santa Fe Railway Company and Others*, 7 I. C. C. Rep. 240. But respecting that matter we do not care to express any definite opinion at this time.

The published local rate from St. Louis to Vicksburg is 15 cents and under the above regulation there is also a proportional rate of 12 cents. It seems to make no difference in what

section the grain may originate. In whatever form it reaches St. Louis or East St. Louis, whether as purely local grain or as a through shipment, it can be shipped out from East St. Louis or St. Louis to final destination on the proportional rate. All that is necessary is to produce an expense bill showing the shipment to St. Louis or East St. Louis. This being true, the question naturally arises, to what grain can the 15-cent local rate from St. Louis or East St. Louis to Vicksburg apply. Clearly none at all, except in those rare instances where an expense bill for some shipment of grain to East St. Louis or St. Louis cannot be produced. The further question then arises, what reason or necessity can there be for this local rate of 15 cents between the points named. We are inclined to believe that no satisfactory reason for its existence can be given, as, under the tariff in question, there can be little or no grain shipped out of St. Louis or East St. Louis that would take that rate.

We see no valid objection at this time to that portion of the rule which provides that grain may be shipped through from point of origin to point of final destination with a stop-over privilege in East St. Louis for cleaning, sacking or any other legitimate purpose, the shipment afterwards carrying a proportional or balance of a through rate from East St. Louis. The Commission has not in former cases disapproved this method of rate-making and the practice seems to have become quite general.

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IN THE MATTER OF PROPOSED ADVANCES IN
FREIGHT RATES.

Decided April 1, 1903.

1. The Act to regulate commerce provides that all interstate rates shall be filed with the Commission, and requires annual reports of the operations and financial condition of all interstate carriers. When a schedule is filed announcing an advance of general application, for which no apparent reason exists, such action is a proper subject of investigation, and if it thereupon appears that the advance is unwarranted the Commission should exhaust whatever power it has to correct the injustice.
2. Transportation by rail is a quasi-public service, not to be sold to the highest bidder, and the charges therefor are not controlled by the law of supply and demand. Freight rates do not in fact rise and fall with changes in the market prices of commodities, though they are often affected by commercial conditions; and when reductions have been made on account of commercial depression it is difficult to see why corresponding advances may not properly be made with the return of business prosperity.
3. An increase which results solely from the withdrawal of a lower export rate, or from the maintenance of a published tariff, cannot ordinarily be condemned as unlawful. Railways are entitled to share in the general prosperity of the country; they have suffered severely in the past and should be allowed to recuperate while that prosperity continues; but it does not follow necessarily that they are entitled to advance former rates which were not reduced on account of financial depression.
4. Under the competitive conditions which heretofore prevailed, tariff rates on grain and grain products from Chicago to New York have not exceeded 17½ cents during the last four years, except for a brief period, while the actual rates have been materially and sometimes greatly below that figure. The legality of the recent advance of this rate to 20 cents depends upon two considerations: First, whether the increased rate is reasonable, having reference to the cost and value of the service, and as compared with rates on other commodities; and, second, whether it is reasonable in the absolute, regarded as essentially a tax upon the people who ultimately pay the transportation charge.
5. A rate of 17½ cents on grain and grain products from Chicago to New

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York is not shown, as alleged by the carriers, to be unremunerative or disproportionate as compared with other rates. Whether tested by cost of movement, by what the carriers have voluntarily accepted in the past, or by comparison with rates on somewhat similar kinds of traffic, it is not unprofitable nor unreasonably low. It is from 2 to 5 cents—10 to 40 per cent—higher than the rates actually received in recent years, and nothing appears in the financial condition of the carriers to justify a greater advance.

6. The rate advances involved in this investigation are those on iron articles, packing-house products, dressed meats, and grain and grain products. Upon all the facts and conditions now appearing, *Held*, That as rates on iron articles were formerly reduced on account of commercial conditions, the advances in those rates may have been proper owing to subsequent change in such conditions; that the advance in the rate on packing-house products, which was made by withdrawing a lower export rate, is not properly an advance; that the advances in rates on dressed meats ought not to be condemned under the peculiar circumstances surrounding that traffic; that the advance in the domestic rate on grain and grain products from 17½ to 20 cents per 100 pounds from Chicago and the other advances made in consequence of the increased rate from Chicago to New York, the same being an advance over the highest published rate in effect for most of the four years previous and a great advance over actual rates received for the last fifteen years, are not justified.
7. This proceeding is in the form of a general investigation, and although the respondent carriers were fully heard by their traffic representatives, and in some instances through their attorneys, the proceeding is in a manner *ex parte*, and facts not brought out in this inquiry, with further discussion of the subject, might lead to a different conclusion. No order, therefore, can be made upon this record, but further proceedings will be commenced unless the respondent carriers readjust their rates on grain and grain products in accordance with the views herein expressed on or before May 15, 1903.

Henry Russel and B. B. Mitchell for Mich. Cent. R. R. Co.
George C. Greene and G. J. Grammer for L. S. & M. S. Ry.

Co.

George F. Brownell, Daniel Williard, H. B. Chamberlain and M. P. Blauvelt for Erie R. R. Co.

Hugh L. Bond, C. S. Wight and H. D. Bulkley for B. & O. R. R. Co.

William H. Joyce, John B. Thayer, Jr., and J. S. Donaldson for Penna. R. R. Co.

S. B. Knight for Wabash R. R. Co.

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Nathan Guilford for N. Y. C. & H. R. R. Co.
B. D. Caldwell for D. L. & W. R. R. Co.
J. P. Orr, D. T. McCabe and *John B. Brittain* for Penna. Co.
F. H. Janvier, Henry H. Kingston and *Isaac McQuilkin* for
Lehigh Valley R. R. Co.
T. C. Powell for Southern Ry. Co.
L. E. Johnson, T. S. Durant and *Joseph W. Cox* for N. &
W. Ry. Co.
E. D. Hotchkiss and *L. F. Sullivan* for C. & O. Ry. Co.
John T. Dye, George H. Ingalls and *C. E. Schaff* for C. C.
C. & St. L. Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

During the last of November, 1902, tariffs were filed with the Commission giving notice of advances in rates of general application. About the same time, owing largely to published interviews of railway traffic officials, the impression grew up that other general advances were to be made. This was widely commented upon by the press, and was the subject of considerable informal complaint to us. Any general advance in transportation charges is a matter of great public concern, and it seemed especially appropriate that the Commission, in the discharge of its duty to keep informed touching the methods and practices of railway carriers subject to the Act to regulate commerce should ascertain the reason for these advances. An order was accordingly entered on December 1st respecting rates upon grain and grain products, dressed meats and provisions from the Mississippi River to the Atlantic Seaboard, by which the leading lines of railway engaging in this traffic were required to appear at Washington on December 16th for the purpose of giving information touching the advances which had been made or were contemplated in these rates.

On the date named a hearing was begun; but it appeared that certain information material to the issues involved could only be furnished in a complete form by taking considerable time, and a continuance was had for the purpose of enabling the car-

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riers to furnish statements in answer to certain inquiries propounded by the Commission. Such statements were subsequently made by nearly all the carriers interested; and a further hearing took place on February 26th and 27th, 1903.

The carriers insisted that the increases in question were not properly advances; that they were, rather, restorations, justified by commercial and traffic conditions, necessary to bring these rates into line with others and yield a fair return for the service. This aspect of the case may be first examined.

The original order referred only to rates upon grain and grain products, dressed meats and provisions. Between the date of the first hearing and that of the second, rates on iron and steel articles had been materially advanced, and these commodities were also embraced in the investigation, although the information elicited was too meager to permit the formation of an opinion of much value.

These last advances took effect January 1st, 1903, and increased the rate on iron and steel articles in carloads from sixth class to ten per cent above sixth class; in less than carloads from fifth class to ten per cent above fifth class. They were effected by the filing of commodity tariffs — not by change in classification; but were made applicable throughout nearly or quite all Official Classification territory. At the same time rates on pig-iron were advanced; thus effecting an increase throughout Official Classification territory of about ten per cent in the transportation of iron and steel in its various forms.

For the purpose of comparing present with past rates, the rate from Pittsburg to Chicago may be used. January 1st, 1888, this rate was 17½ cents in carloads and 20 cents in less than carloads, as against a rate of 16½ cents in carloads and 20 cents in less than carloads at the present time. The general practice seems to have been to reduce these rates before the opening of navigation about 2½ cents per hundred pounds upon both carload and less than carload quantities; thus maintaining a somewhat lower basis during the summer than during the winter. This condition of rates continued until April 13, 1896, when rates of 18 cents for less than carloads and 15 cents for carloads were put in effect and continued until January 1st, 9 I. C. C. REP.—25.

1900. During January, 1900, and the following winter rates of 21 cents for less than carloads and 18 cents for carloads were maintained; but during the winter of 1902 the summer basis was continued in force. It will be seen, therefore, that since the publication of rates was required the rule has been to maintain during the winter substantially the rate now in effect; that this has been departed from upon two occasions, one covering four winters between 1895 and 1900, and the second covering the winter of 1902. The testimony was that the lower rate during these times had been required by the condition of the iron industry; that this industry was now prosperous, and that manufacturers were agreeable to the maintenance of the former basis.

There are, necessarily, many changes in freight rates. An examination of the records of a single day, selected at hazard, showed 263 such changes, and our Auditor is of the opinion that this is below the average. While many of these changes are, perhaps, unnecessary, many are necessary. The freight rate cannot be regarded as a commodity whose price rises and falls with supply and demand, but it is often controlled by commercial conditions; and where reductions have been made by reason of commercial depression it is difficult to see why corresponding advances may not with propriety occur when that depression is relieved. Iron rates seem to be peculiarly susceptible to these commercial influences. The charge for transporting pig-iron from southern furnaces to northern points of consumption has for a long time varied directly with the value of the article transported. It is a matter of general information that between 1895 and 1900 the iron industry was much depressed, and the carriers now tell us that something of the same nature occurred in the winter of 1902. If the railways reduced their rates during these periods at the solicitation of manufacturers, it seems no more than just that they should be permitted to raise them now, when the condition of that industry permits it.

These iron rates are of great importance to some at least of the carriers which are parties to this investigation. The commodities to which they apply made up in the year 1902 14.47 per cent of the entire tonnage of the lines operated by the Penn-

sylvania Company, and 9.66 per cent of the entire tonnage of the Pennsylvania Railroad Company. No shipper was heard, and we have no special knowledge or information touching the conditions under which this traffic moves or the cost of movement. No opinion is, therefore, expressed as to the reasonableness of the present rates; but we do think that, upon the showing made by the carriers, it cannot be affirmed that the advances were not justified by commercial conditions.

It should also be noted that, so far as appeared in testimony and so far as the Commission has information, these iron rates have, as a rule, in the past been observed, so that the actual rate charged has in the main corresponded with the published tariff. No advance is, therefore, effected by an observance of the schedule rate at the present time.

The rates upon grain and grain products, provisions, and dressed meats referred to in the order directing this investigation were those from the Mississippi River to the Atlantic Seaboard. It is well understood, however, that the rate from Chicago to New York is the measure by which those from western points to the Seaboard are generally established, and it will be most convenient to use that rate in the discussion of this case.

January 1st, 1903, the export rate of 25 cents per hundred pounds on provisions, or packing-house products, from Chicago to New York was withdrawn. This left the previous domestic rate, which was 30 cents, applicable to export traffic and operated to advance the rate on these commodities, when for export, 5 cents per hundred pounds.

An examination of the published tariffs on packing-house products shows that there has been a general attempt to maintain that rate at 30 cents, which is the regular fifth class rate. Down to 1900, however, this attempt was not successful for any considerable continuous period. Rates were frequently reduced, dropping as low at one time as 18 cents, and averaging, perhaps, not far from 25 cents. During most of the year 1899 the rate was 25 cents; but on January 1st, 1900, it was advanced to 30 cents, at which figure the domestic rate has since continued. March 26th, 1902, the export rate was reduced to 25 cents, and remained at that point until January 1st.

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The above have been the published rates, but they have been seldom observed. Testimony taken in January, 1902, shows that during the previous summer while the published rate was 30 cents, the actual rate was 25 cents, and sometimes as low as 23 cents. It seems probable that for no considerable length of time in recent years, until last March, has a higher rate than 25 cents per hundred pounds been actually received for the movement of this traffic. The present rate is, therefore, in fact a substantial advance over what has been previously received.

It will be noticed, however, that the advance of January 1st consisted merely in the withdrawing of an export tariff. While this Commission has held that carriers may properly, under stress of competitive conditions, both commercial and transportation, apply a lower rate to export than to domestic business, this is in the nature of a license to the carrier, and it is doubtful whether a case could arise under which the Commission would be warranted, if it had the legal authority, in directing carriers to prefer export to domestic traffic. It can hardly be affirmed, therefore, that this change in the tariff schedule was an unlawful or an improper one. We are strongly impressed that the rate at present in force may be too high. This species of traffic is quite desirable, and frequently moves in other portions of the country at less than the corresponding class rate. It has been uniformly transported in Official Classification territory for less than that rate in fact. But we hardly think that an increase in rates which results simply from the withdrawal of a lower export rate, or from the maintenance of any tariff rate, should be condemned solely for that reason as an unwarranted advance.

January 1st, 1903, the rate on dressed beef from Chicago to New York was advanced from 40 cents to 45 cents per hundred pounds. From November 24th, 1890, to February 1st, 1899, the tariff rate was uniformly 45 cents. On the last-named date a rate of 40 cents per hundred pounds was published and continued in effect until January 1st, 1900, when the rate was restored to 45 cents. July 29th, 1901, this rate was again reduced to 40 cents, being on January 1st, 1902, raised to 45 cents. March 26th, 1902, it was once more reduced to 40 cents, where

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it remained until the taking effect of the present rate. It will be seen, therefore, that for eight years previous to 1899 the uniform rate had been 45 cents; that for the last four years the rate has been 45 cents about one-half the time, and 40 cents the remainder.

Here, however, as in case of packing-house products, the published rate has not been collected, during the greater part of the time. The reductions in tariff during the last four years have resulted from attempts to bring the actual and published rates into harmony. Testimony taken upon the occasion above referred to showed that during the year 1901 the actual rate had been, approximately, 40 cents when the published schedule was 45 cents, and had fallen to 36 cents after the reduction of that schedule in July. It seems probable that during the last ten years the amount actually received has not equalled, certainly not exceeded, 40 cents on the average. At the present time these tariffs are said to be observed, and if this is so an actual advance over recent years of 5 cents or more per hundred pounds is effected.

Here, then, is found both a nominal and an actual advance. A uniform attempt has been made, to be sure, to maintain a rate of 45 cents, and there is no January first since rates were published when the printed tariff, perhaps for a short time the actual tariff, has not been as high as 45 cents; but that rate has never been maintained for any considerable time. We should feel that this required some further explanation or justification were it not for the peculiar conditions which surround the movement of this traffic. It is well understood that dressed meats and provisions are mainly furnished for transportation by some half dozen great packing-houses. The traffic is, therefore, highly concentrated, and these shippers have been able, owing to that fact, to play off railroad against railroad in a way that has enabled them to secure unusual concessions. Competition has forced down these rates, but it can hardly be termed legitimate competition. In view of these peculiar conditions we have concluded, with some hesitation, that this increase ought to be regarded rather as a restoration or maintenance of rates than as an advance within the meaning of this investigation, es-
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pecially in view of the fact that while the rate is high the service is expensive to the carriers.

The loading of these cars is comparatively light; the car itself is of special construction and heavier than the ordinary car; refrigeration must be provided, which necessitates the hauling of large quantities of ice and salt; an express service is demanded; and the car must be returned empty.

Ordinarily the payment of a rebate, when general and long continued, must finally inure largely to the benefit of the public. This is doubtless measurably true of these rebates which have been paid to packers in the past; but it seems probable that a considerable portion of these illegal concessions has gone directly to the benefit of those who received them, and that a maintenance of these rates will be principally at their expense, and not at that of the general public. At the same time it must be noted that these advances are actual, that the carrier is receiving so much more for the service,—a fact of much importance in considering the other questions involved in this proceeding.

December 8, 1902, the domestic rate on grain and grain products from Chicago to New York was advanced $2\frac{1}{2}$ cents per 100 pounds—from $17\frac{1}{2}$ to 20 cents. Grain rates have always been subject to frequent fluctuations. Generally speaking, the rate is somewhat lower during the period of lake navigation than during the remainder of the year, although this rule is not by any means invariable. Examining the period covered by the last 10 years, we find that for the first five of those years the published rate averaged, approximately, 20 cents — the present rate. During the last five years it has been, approximately, $17\frac{1}{2}$ cents. Since April, 1899, there has been no time until December 8, except a brief period beginning the latter part of the year 1899, when the rate has exceeded $17\frac{1}{2}$ cents. During the summer of 1900 it was 15 cents; during the following winter, $17\frac{1}{2}$ cents. In the summer of 1901 it was again reduced to 15 cents and advanced in the fall to $17\frac{1}{2}$ cents. During the summer of 1902 it remained at $17\frac{1}{2}$ cents, and has now been advanced to 20 cents. It appears, therefore, that the published rates of today are

higher than for any considerable length of time during the last four years.

The difference between the present rate and the actual rate formerly obtained is even greater. It was said during this investigation by one or more of the witnesses that except for a short time during the summer of 1887, immediately after the taking effect of the Act to regulate commerce, and for the period since the issuing of the injunctions on March 26, 1902, grain rates had for no considerable time been maintained, the amount actually received having been as low as eight or nine cents from Chicago to New York. Testimony taken before the Commission in November, 1901, showed that the ruling rate during the summer of 1901 was 11 cents from Chicago to New York. To say how much the present rate exceeds, on the average, the actual rate for the last four years would be little more than a guess, but probably from 5 to 7 cents. Here then is an increase of from fifteen to fifty per cent in the amount actually received in recent years for the transportation of grain from Chicago to New York.

Carriers gave as one of their reasons for the present advances in these rates, difference in commercial conditions. Just what commercial conditions were referred to, or just what the difference was supposed to be, was not definitely stated. During the last four years agriculture has prospered throughout the land. Crops have been good and prices high. These conditions differ in no essential respect today from what has prevailed during the four years past. It was said by one witness that the corn crop of last season was large, and that this would justify a higher rate; but a large crop means an abundance of traffic, and usually a low price, and this would be a reason apparently, not for advancing, but rather for reducing the rate. In point of fact, the price of corn west of the Missouri River is lower this winter than it has been during either of the two preceding years. This is not a case like the iron schedule, where industrial depression had induced a reduction of rate. These grain rates have not fallen because of any commercial conditions, nor are they now advanced by reason of any change in such conditions.

Another reason assigned by the carriers for these advances in grain rates was difference in traffic conditions. It was said that

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competition was less active, and that rates could therefore be maintained. We think that herein is found a substantial reason why these rates could be advanced and maintained; whether it be also a reason why they should be is another matter.

In 1899 the export rate on corn from the Mississippi River to New York had fallen to 13 cents. This was so unusually low that the Commission instituted an inquiry into the causes which had induced it. In that proceeding it appeared that two kinds of competition were operative. First, there was competition through the Gulf ports. Large quantities of grain are exported, and this export traffic could reach the foreign destination from the grain fields either through Galveston and New Orleans, or through the Atlantic seaports. Second, there was competition between different carriers reaching these various ports, and it was said upon that hearing that the cause which had brought about the phenomenal rate in question was the competition between carriers extending from the Mississippi River to the various Atlantic ports.

At that time it was generally understood that the most troublesome of these eastern competitors were lines serving Norfolk, Newport News and Baltimore; the Baltimore & Ohio, the Norfolk & Western, and the Chesapeake & Ohio. Since then it is commonly supposed that the Baltimore & Ohio and the Norfolk & Western have passed under the controlling influence of the Pennsylvania Railroad, and the Chesapeake & Ohio under the joint influence of the Pennsylvania and the New York Central, this influence having been acquired by the purchase on the part of the controlling companies of large blocks of the stocks of the corporations controlled, as appears from the annual reports to this Commission. The total amount of outstanding capital stock of the Baltimore & Ohio Company, on June 30, 1902, was about \$135,000,000, of which the Pennsylvania Railroad Company owned \$40,000,000 and the Pennsylvania Company \$12,000,000. The outstanding capital stock of the Norfolk & Western was \$89,000,000, of which the Pennsylvania Railroad Company owned \$25,830,000 and the Pennsylvania Company \$6,500,000. The total outstanding stock of the Chesapeake & Ohio was, approximately, \$60,000,000, of which the Pennsylvania Railroad Company owned \$10,000,000, the Pennsylvania Com-

pany \$4,000,000, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a Vanderbilt line, \$7,500,000, and the New York Central & Hudson River Railroad Company, \$5,000,000.

The Pennsylvania Railroad Company does not, therefore, own an absolute majority of the stock of the Baltimore & Ohio, or of the Norfolk & Western, nor do the holdings of the Pennsylvania lines and the Vanderbilt lines in the Chesapeake & Ohio amount to quite a majority of that stock. It has been suggested that affiliated individual holdings would make up such a majority in the several instances, and it seems altogether improbable that these companies would have invested the large amounts above indicated unless they had been thereby assured of an actual control; but of this there is no evidence before us; and laying that suggestion entirely aside, it is still evident that the stock holding in each case is sufficient for a practical control. It might not be possible to permanently foist upon these companies a policy detrimental to them and for the interest of the Pennsylvania and Vanderbilt lines, but it would be possible to dictate any policy which was fairly for the interest of all parties concerned; and undoubtedly agreement touching the rates to be put in and a general maintenance of those rates when published would be for such interest. What has been accomplished in case of the companies named through stock ownership is supposed to have been effected in case of other lines participating in this traffic by a unification of control through community of interest and similar devices. The result is that competition is no longer so acute. It could probably be said with truth that these companies are still independent competitors, but the competition of today is altogether different from that of four years ago; it no longer extends to the rate itself.

It has been frequently observed that competition in rates under the Act to regulate commerce is in a way a misnomer. This grain rate between Chicago and New York must be the same by all lines. If any one line reduces that rate every other line must make a corresponding reduction or withdraw from the business. No line can, therefore, hope to gain a permanent advantage by a reduction in the published tariff. So long as rates are observed there can be no competition in the rate, although there may be in facilities. Such competition necessarily consists in departures

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from the published rate. While there has been in the past the most active struggle for this grain business, and while that contest has led to the offering of reduced rates to shippers, this has been not in obedience to but in defiance of the law. Such competition does not, however, materially increase the total amount of traffic. It may turn additional tonnage to a particular line temporarily, but the total result is a reduction in the aggregate gross and net revenues of all lines and probably in the net revenue of every individual line.

While the folly of such competition has been obvious to all railroad operators in the past, it has been found practically impossible to control it, for the reason that all were at the mercy of any one irresponsible traffic official. The unification of railroad ownership in recent years has tended to eliminate the irresponsible line and thereby prevent demoralization in rates. As one witness expressed it, there is "returning common sense."

Another important consideration is this: On March 26, 1902, at the petition of this Commission, injunctions were granted against several railway companies, restraining them from charging other than the legally published rates. The companies thus enjoined are among the largest and extend into nearly all parts of the United States. An observance of rates upon these lines meant that they must be observed very generally. It is believed that the injunctions have been obeyed by those carriers directly subject to them, and that other carriers have also observed, in the main, during the same period, their published tariffs. Not only the sworn testimony of those railway officials who must know, but many other circumstances, indicate that at no time for many years has there been so general a maintenance of tariffs as during the last twelve months.

This change in traffic conditions, this restraint upon those competitive influences which have depressed these grain rates in the past, are doubtless a potential reason for the present advances. Can it be said that those changed conditions are also a justification?

What occurred when these advances were determined upon is instructive. Traffic representatives from the principal lines interested met in the city of New York. The recollection of those present as to what was said upon that occasion was some-

what indistinct, especially at the last hearing, but all admitted that as a result of the meeting it was determined to make these advances. Some witnesses stated that the advances were agreed upon; others that there was an understanding that they should be made, while the representative of one southern line testified that he neither agreed nor understood, but simply announced that his line would make the advance. The thing done, not the name, is of consequence. To the public who pay these rates it is immaterial whether they have been increased as the result of "agreement" or "understanding" or "announcement." If this be more than a play upon words it goes to the criminal quality of the act, not to its practical effect. Now, such advances as these have often been made before; indeed, could have been at any time agreed upon. The trouble in the past has been that the agreement when made was not observed, owing to the existence of competitive conditions. That competition has today been restrained, and for this reason the agreement can now be kept.

The Act to regulate commerce prohibits the pooling of traffic or earnings. The Sherman Anti-Trust Law forbids the making of all agreements for the advancement or the maintenance of rates. The purpose of these Acts is to secure competition between rival carriers. With respect to the previous rates, that competition has actually existed. Under its influence it has not been possible to maintain for the last four years, except for one brief period, a higher published rate than 17½ cents, while the actual rate has been much lower. During these years traffic has been abundant; agricultural and commercial prosperity have prevailed; no special conditions have required unusual rates upon these commodities. We do not think that this rate, the highest which could be maintained in the face of open competition, should be advanced when that competition has been put under check, unless some valid reason can be shown for the advance.

Two reasons are alleged by the carriers, of which the first is that the rate is unremunerative and disproportionately low as compared with other rates. This reason, if substantiated, ought to be a good one. Carriers are entitled to charge a reasonable compensation for their services. Except in unusual cases no rate is reasonable which does not yield a fair profit upon

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the transaction. If these rates from whatever cause have been forced down to a point where the return is inadequate they ought to be made higher. We are brought therefore to the question, does a rate of $17\frac{1}{2}$ cents upon grain and the products of grain from Chicago to New York yield a fair return to the carrier?

Certainly, that rate as compared with others is extremely low. The short line distance is 912 miles via the Pennsylvania lines, or 3.84 mills per ton mile. By the Vanderbilt lines, over which the largest quantity of grain moves, and by which it can probably be transported most cheaply, the rate yields, approximately, 3.6 mills per ton mile.

The rate per ton mile, while often instructive, is not by any means a fair index of a reasonable rate. The cheapest traffic is frequently the most profitable to the carrier. For the year ending June 30, 1901, the average receipts per ton mile upon all kinds of traffic over the Chesapeake & Ohio System, embracing about 1,500 miles, was 3.88 mills. The percentage of operating expenses was 62.87 — much below the average of the whole United States and among the very lowest. Its net earnings were \$3,656 per mile, equivalent to 6 per cent interest on \$60,000 per mile — just about the average capitalization of all our railroads. This example is referred to as showing that business may be profitably done at astonishingly low rates. Indeed, it is usually a question, not of the absolute rate, but of the conditions under which the traffic is handled.

Now of all commodities, grain is among the very most desirable species of traffic. It moves between Chicago and the Atlantic Seaboard in large quantities, frequently in trainloads. Cars can be loaded to their full capacity. The nature of the business permits prompt loading and unloading. The character of the service required allows the most economical handling of trains with respect to rate of speed and other operating conditions. There is hardly any kind of traffic moving from Chicago to the Atlantic Seaboard which can be transported at less cost to the carrier than grain.

Testimony in this case proves that grain has been carried during the last 10 years from Chicago to New York for from 8 to 9 cents per 100 pounds. When grain is intended for

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export it is transported by the carrier as a part of the through rate to the ship's side in the harbor of New York, and for this service the delivering road receives an allowance of three cents per 100 pounds. Deducting this from a rate of eight or nine cents, there would remain five or six cents per 100 pounds, about one mill per ton mile, for the transportation of the grain from Chicago to New York. While the delivering carrier undoubtedly makes a profit out of this terminal charge, and while it should properly be regarded as a part of the through rate in determining the reasonableness of that rate, it is subtracted from the total rate in dividing with lines west of Buffalo, so that upon an 8-cent basis those lines would actually receive about one mill per ton mile for the service, and it cannot be assumed that this service has been repeatedly and voluntarily rendered for less than the actual cost of movement.

As bearing upon this, certain testimony given in the present investigation by the traffic manager of the Lake Shore & Michigan Southern Railway as to the cost of moving grain over his line is interesting and instructive. He testified that the standard train upon the Lake Shore road consists of 50 cars, containing 80,000 pounds per car; that the time occupied in hauling this train from Chicago to Buffalo would be 36 hours, and that the cost of movement, including labor of trainmen, coal consumed, oil and waste, rent of engine and of cars, would approximate \$260. He gave the items making up this total, which need not be repeated here. The traffic manager of the New York Central Company was unable to give the corresponding figures from Buffalo to New York, but it appeared that a standard locomotive would haul, with the assistance of a helper at one or two points, this train, or an even heavier train, from Buffalo to New York in approximately the same time and at approximately the same expense, the distance being about 100 miles less. The total train expense, therefore, of moving this traffic from Chicago to New York would be \$520, while the total revenue derived from it, at 17½ cents per 100 pounds, would be \$7,000.

This estimate of cost does not of course include the entire expense of moving that train-load of grain between those points.

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The terminal charges are entirely ignored and these are often heavy. Nothing is allowed for maintenance of way, nor for those other expenses of operation which are chargeable in a measure upon all traffic but which cannot in the nature of things be exactly apportioned. Again, a part of these cars must be returned empty; still the items which are taken into account, namely; labor of trainmen, cost of fuel, oil and waste, renewals and repairs of engines and cars, make up nearly one-half the operating expenses of the railroad systems under consideration, and it is impossible not to feel, after every allowance has been made, that this traffic, moving under the circumstances and conditions and in the quantities that it does, yields to these carriers a very handsome profit.

It has been suggested that these estimates of the traffic manager of the Lake Shore are misleading. The testimony was first given before the Commission in another proceeding, where the purpose was to extol the advantages of grain as a species of traffic in comparison with other commodities. Still it contains nothing but a recital of facts which for the most part are not open to possible dispute. Loadings of grain between Chicago and New York upon the Vanderbilt System do not now average \$0,000 pounds to the car, but they will in the near future. The Lake Shore can haul 50 of these cars from Chicago to Buffalo. The Michigan Central can haul 35 cars from Chicago to Detroit and the entire 50 cars from Detroit to Buffalo. The New York Central can carry the entire train to New York. The Vanderbilt System will speedily, if it does not today, transport grain between these points upon this basis. It is probably true that no other line could handle this traffic quite as cheaply.

It is said that this rate is unduly low in comparison with other rates. Grain is a commodity which upon all accounts is entitled to one of the lowest rates accorded to any article. We are of the opinion that not only is this traffic profitable, considered by itself, at a rate of 17½ cents, but also that such a rate is sufficiently high as compared with others. We have before us in this investigation four classes of commodities; iron articles, packing-house products, dressed beef, and grain and grain products. The Commission has no information as to the

cost of moving the first of these commodities, but it has recently taken extensive testimony with respect to the movement of dressed beef and packing-house products. Carriers do not deny that 45 cents is a fair rate for the transportation of dressed meats and 30 cents for packing-house products; indeed, they have never asked more and have usually taken much less; yet we are of the opinion that grain at 17½ cents is quite as good business as either of these commodities at the rates charged.

Dressed beef loads about 22,000 pounds to the car. Refrigeration is necessary, and this requires a car of peculiar construction and of unusual weight — about 36,000 pounds. The ice and salt weigh, approximately, 5,000 pounds, making in the aggregate for the entire load, 63,000 pounds, of which but 22,000 pounds are paying freight. At 45 cents a hundred this would amount to \$99 per car.

Packing-house products, or provisions, load somewhat heavier than dressed beef, on the average about 30,000 pounds. This, upon a basis of 30 cents, would yield a revenue of \$90 per car. The average loading of grain cars upon standard lines at the present time is probably 65,000 pounds. It was said by all witnesses inquired of that grain is now loaded to the full capacity of the car. Within the last three years railroads have added largely to their equipment of freight cars, and the addition has been almost entirely in cars of large capacity. The Traffic Manager of the Michigan Central testified that the cars upon his system are from 60,000 to 80,000 pounds capacity. A grain load of 65,000 pounds would yield \$113.75, as against \$99 for dressed meats and \$90 for provisions.

The total weight of the grain and car would be greater than either the dressed beef or provisions, but testimony in previous cases showed that in the operation of these railways the tendency is to regard the loaded car as the unit; a train-load, consisting of a certain number of cars without much reference to the loading of those cars. This would not be true to the same extent upon other lines as upon the Vanderbilt System, since the grades by other roads are heavier. Upon the Erie road, for instance, there are several sections where a standard locomotive only handles about 1,000 tons gross, and upon these divisions

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the entire weight of the load is a very material factor. The service in case of dressed beef is express, and the cars are usually returned empty. Packing-house products are usually transported in cars of peculiar construction, and refrigeration is sometimes required. Both dressed beef and provisions are transported in private cars for which an excessive mileage is paid. Grain can be hauled at the most economical rate of speed, and the cars when empty can be used for return loads, unless it is desirable, owing to their larger capacity, to return them promptly for another loading of grain. On the whole it seems likely that of these three commodities grain at 17½ cents is the most profitable and desirable traffic.

Another commodity as to the movement of which the Commission is well informed is hay. This loads to a capacity of 22,000 pounds to a car, approximately. The 6th class rate from Chicago to New York is 25 cents per 100 pounds, and at this rate the revenue from a carload of hay would be \$55 — only about one-half that of a carload of grain at 17½ cents; yet for 13 years or more carriers transported hay throughout all Official Classification territory as 6th class, and often for less. January 1, 1900, this was raised to 5th class, the Commission has held improperly, but even so, as found in that case, grain is the better business.

Traffic moving at the higher class rates is able to pay a heavier transportation charge than such commodities as hay and grain, and the charge applied is supposed to be very much greater. Yet it is not at all certain that grain at this rate would not compare favorably with the higher class rates. The general manager of the Southern Pacific Railway testified in a recent case, that an account of actual operations upon that entire system showed that less than carload traffic was handled at four or five times the expense of carload traffic, and this although, owing to the consolidation of less than carload business, their transcontinental traffic was transported at nearly the same expense in carloads and less than carloads. Now, the first class rate from Chicago to New York is 75 cents, and the business which moves upon that rate is entirely less than carload. If it costs these lines four times as much to handle that business as it does to

handle grain in carloads, it must follow that this first class rate is not materially better than the grain rate under consideration.

The first reason urged by the carriers for advancing these rates beyond the competitive limit is not therefore sustained. Whether tested by the actual cost of movement, by what carriers have voluntarily accepted in the past, or by comparison with other somewhat similar kinds of traffic, this rate is not, in our opinion, extravagantly low.

The second reason is, that they should be allowed to increase their revenues owing to increased expense of operation. The whole claim stated upon the hearing, in varying forms, comes briefly to this: The present prices of commodities are high, therefore they can pay a higher freight charge. Times are good and railroads should share in the general prosperity; but high prices of materials and labor add to the expense of operation, and gross revenues must therefore be increased.

Plainly the character of the question thus presented is entirely different from that of questions previously considered. It is no longer a question of what the traffic will bear, but rather of what the public should bear. Conditions are such that this rate *can* be advanced as between the people who pay it and the stockholders who receive it. Is the advance right? Every question as to the reasonableness of a rate may present itself in two aspects. First, is the rate reasonable estimated by the cost and value of the service, and as compared with other commodities; second, is it reasonable in the absolute, regarded more nearly as a tax laid upon the people who ultimately pay that rate. The considerations which determine the first of these aspects are of but little weight in determining the second, which we have now to consider.

Every such inquiry involves the idea of some limit beyond which the capital invested in railways ought not to be allowed to tax other species of property. What is that limit, and how can it be fixed?

In many countries the conduct of transportation by railway is undertaken by the government at the public expense. The government of the United States could probably borrow what money would be needed to buy or to build the railways of this

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country at from 2½ to 3 per cent. Ought the public to be taxed for the service rendered beyond this rate of interest? Plainly, no such test ought to be applied. This government does not undertake that duty, nor does it guarantee any rate of return upon the money invested. It would be clearly unjust to impose upon the private capital which performs this quasi-government function all the hazard without allowing it some participation in whatever profit may accrue.

The cost of reproducing railway property has been suggested as a basis upon which return should be allowed. But this, while of great assistance in arriving at a just result, could not be taken as an exclusive guide. Many of our railways were built years ago, when the cost of construction was much greater than now. In the development of that industry they have been reconstructed and improved. The first outlay has perhaps been rendered practically worthless, and a railway honestly managed, never having paid excessive dividends, may actually represent today much more money than the present cost of building. Those who originally invested their money in this enterprise and have kept pace with the public necessities ought not to be required to bear the entire burden of this shrinkage.

Moreover, the value of a railway system does not depend upon the mere cost of its embankment or its equipment. It is rather a question of location, of connections, of terminal facilities, of enterprises along its line; and shall nothing be allowed to the foresight and ability which have marked out and perfected that system?

It is often urged that the money actually invested in a railway ought to furnish a basis upon which returns should be made, and this is at first thought a plausible suggestion and might in many cases be a reasonably just one. In many cases it would not. It was said in argument before the Commission recently that the capitalization of the Mobile & Ohio Railway represented the actual money which had been invested in that property, and no more. This road was largely obliterated by the civil war, and was operated at great loss during that war. All this is now represented in its capital stock. Should the stockholders of that railway company be indemnified for the loss of

their property when almost every species of property in that section was destroyed. Where there is no question of war, or its devastations, the money actually paid into a railway property may represent all manner of waste and extravagance. Clearly the public ought not to pay this.

It is frequently claimed that a railroad should be allowed to earn upon the basis of its capitalization. Such a test as this is even worse than the last preceding, for while money actually invested in a railway property may represent disaster or extravagance, or even positive dishonesty, there are numerous cases where the capital stock of such company represents absolutely nothing whatever. The Erie Railway is capitalized at the present time for nearly \$300,000 per mile. The Lake Shore & Michigan Southern Railway, which is in a way a parallel and competing line, and in every sense better in point of construction and equipment, is capitalized for about \$100,000 per mile. These two roads both carry grain from Chicago to New York; the Lake Shore much more economically than the Erie; and the rate must be the same by both. Which capitalization shall govern?

This question of the reasonableness of a rate, as controlled by the earnings of a railway, was considered by the Supreme Court of the United States in the Nebraska Freight Rate Case, 169 U. S. 466, 42 L. ed. 819, 18 Sup. Ct. Rep. 418, and in the course of that opinion the latter point referred to was specifically considered and passed upon. The railways there contended that they should be allowed to earn interest on their funded debts and a dividend upon their capital stock. This claim the court denied, saying that it could not be affirmed, as a matter of law, that a railroad was entitled to earn upon the basis of its capitalization. That case also establishes certain general principles upon which the reasonableness of rates from the revenue standpoint are to be decided. It is said as a conclusion of the whole discussion that the carrier is entitled to earn a "fair return upon the value of that which it employs for the public convenience." But what is the value of a railway? Does not that value depend almost wholly upon the rate which it is permitted to charge? If the rates upon a railway

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system are reduced without thereby stimulating the movement of traffic the value of the property is diminished. If its rates are advanced without loss of traffic the value of its property is increased. Stated in another way; the value of a railway depends upon what it can earn on the basis of a reasonable rate; and the reasonableness of a rate depends upon the return which it will yield upon the value of the property.

The court pointed out in the above case certain elements which should be taken into account in determining the reasonableness of rates, and these were "the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses." The court added that there might be other matters proper to be regarded in estimating the value of the property, and did not indicate the relative importance which was to be assigned to the various matters specified. It is plain that until there be fixed, either by legislative enactment or judicial interpretation, some definite basis for the valuation of railroad property and some limit up to which that property shall be allowed to earn upon that valuation, there can be no exact determination of these questions. In the absence of such a standard the tribunal, whether court or commission, which is called upon to consider this matter can only upon the whole exercise its best judgment. In the Nebraska case the Supreme Court was called upon to consider a schedule of rates which was clearly unlawful, and was not therefore embarrassed by the indefiniteness of the standard which it proposed. The precise question before the Commission in the present case seems to be this: We find a rate fixed by competition, sufficiently remunerative, and properly adjusted to other rates. Is there anything in the financial operations of these carriers which justifies an advance in that rate? Should the property invested in these railroads be allowed to lay a larger tax upon the general public when and

largely because competitive conditions have been so far restrained that it can?

In discussing this phase of the case certain general considerations should be kept in view. Carriers insist that inasmuch as the prices of articles transported have advanced the rate ought also to advance; otherwise expressed that they should share in the general prosperity.

While within the last four years the prices of nearly all commodities of general consumption have materially risen, the freight rate has not advanced to a corresponding extent. If therefore that rate is to be treated as an article of merchandise, it is difficult to see why the position of the carriers is not well taken. It is not, however, properly so regarded. Transportation by rail is a service of a quasi-public nature, not to be sold to the highest bidder, nor subject to the law of supply and demand. This sufficiently appears from the provisions of the Act regulating commerce, which requires the same rate to be charged all persons and enjoins the publication of that rate.

Nor does the freight rate in fact rise and fall with the price of the commodities transported. Class rates between New York and Chicago have been exactly the same for the past 16 years, through periods of prosperity and depression, and the same is in the main true throughout all Official Classification territory. There has been during that period a very marked decline in the rate per ton per mile, and a popular impression seems to be that this indicates a general decline of rates, due largely to the period of stringency through which the country passed some years ago; but for this there is no warrant in the facts, so far as the ton mile is any indication. Below is given the rate per

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ton per mile of all the railways in the United States for the years 1890 to 1901, inclusive:

Year ending June 30—	Revenue per ton of freight per mile. (cent).
1901.....	0.750
1900.....	0.729
1899.....	0.724
1898.....	0.753
1897.....	0.798
1896.....	0.806
1895.....	0.839
1894.....	0.860
1893.....	0.878
1892.....	0.898
1891.....	0.895
1890.....	0.941

The period of greatest loss in railway earnings was from 1892 to 1894; the beginning of recuperation from 1897 to 1899. Yet it will be seen from the above table that from 1892 to 1893 the decline in the rate was but 20 points, and from 1893 to 1894 but 18 points, as compared with a decline of 45 from 1897 to 1898 and 29 from 1898 to 1899.

These very domestic grain rates under consideration have never varied, so far as shown by the published tariff, with the price of grain, nor with the earnings of railways, nor with the general commercial conditions of this country. From 1890 to 1898, during the whole period of depression, they were maintained at about 20 cents. It was not until 1899, with increasing traffic, with high prices, with commercial prosperity, that they fell to 17½ cents. In many instances freight rates are reduced because of business depression. To keep the factory in operation, the railway may find it necessary to transport its raw material, its coal, its oil, and even its finished product, at a reduced rate. Wherever such depression has caused a reduction in rate an advance may well follow the return of prosperity; but no such rule should be applied to cases where the reduction was not due to that cause.

To the broader proposition, that railways should share in the general prosperity, we assent. Railway stocks and railway

properties ought not to fluctuate in value like industrial stocks or industrial enterprises, and it is hardly probable that they will do so. The causes which have contributed to this in the past will not operate to the same extent in time to come. The great systems have taken permanent form. The tendency is to operate railways as business enterprises; not for the stock market. Consolidations in ownership, whatever their other effects, contribute to the maintenance of rates and will prevent in case of future dearth of traffic the suicidal competition which might otherwise be induced. Still, whatever may be true in the future, they have certainly suffered severely in the past and should be allowed to recuperate in this era of good times. But this does not necessarily mean that they are entitled to advance former rates, certainly not in those cases where the rate was not reduced owing to the financial depression.

In many parts of the country railways charge less for transportation to a more distant than to a nearer intermediate point. For example, the carload rate on bar iron is 75 cents from New York to Los Angeles, while to Ash Fork, an intermediate point upon the Santa Fé road, nearly 500 miles east of Los Angeles, the rate is \$1.90. Carriers justify this adjustment of rates by which Ash Fork is charged two and one-half times as much as is Los Angeles, although the traffic to the latter point passes through the former, by saying that water competition fixes the rate at Los Angeles, and that although the rate is unreasonably low there is some profit in the movement. The railroad itself must be constructed and maintained, with its station-houses and its operating force. These general expenses must be incurred at all events. Any traffic not otherwise coming to the road which pays something above the cost of moving, including rent of engines and cars, cost of fuel and labor, adds to the gross revenues without correspondingly increasing operating expenses. Take, for example, the train of grain, already referred to, hauled from Chicago to New York. By applying to the movement of the 2,000 tons in this train-load a rate of even five cents per 100 pounds, earnings of \$2,000 accrue, while the actual cost of transportation, including only the above items, could not upon any theory equal that sum.

The Commission does not sanction the extent to which this
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principle is often pressed in the making of relative rates; certainly it does not approve the relation of rates established in the example above cited. There are many limitations to the application of the principle. Additional traffic in reality adds to those expenses which are not in theory affected. It costs more to maintain the track and keep up the operating force of a railroad when transacting a heavy than when doing a light business. The general expenses are higher. Increased tonnage speedily finds its way into the construction account; still up to a point at which traffic can be handled to advantage increase in tonnage at the same rate not only increases gross receipts proportionately, but increases net receipts in a still greater proportion. Within the last few years there has been a remarkable growth in railroad tonnage, and it is quite conceivable that this may add sufficiently to the net income without any advance in the price of transportation.

The statement of the above law of increasing returns assumes, of course, that the items which enter into operating expenses continue the same. In fact, with increase in traffic has come enhanced cost of almost every item which makes part of the operating expense of a railroad. It is plain that this disadvantage might entirely offset the other advantage. Manifestly the problem admits of no *a priori* solution. The only reliable answer is from the observance of actual results.

The following is a compilation from the statistical reports made to the Commission showing for the years 1897 to 1902, inclusive, the number of tons carried one mile, the gross receipts, the net receipts and the railroad mileage represented for the whole United States, and also for Groups II and III, embracing the territory in which these lines operate. It will be seen from an examination of these tables that while the mileage, especially in Groups II and III, within whose territorial limits the traffic in question is transported, has increased but slightly, there has been a marked increase in the tonnage and a somewhat corresponding increase in gross and net earnings:

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DATA FROM REPORTS ON STATISTICS OF RAILWAYS.

YEAR ENDING JUNE 30—	Gross earnings.			Net earnings.		
	UNITED STATES.	GROUP II.	GROUP III.	UNITED STATES.	GROUP II.	GROUP III.
'1902	\$1,711,754,200	\$401,227,367	\$255,795,682	\$605,616,795	\$140,509,871	\$77,892,144
1901	1,598,526,087	379,552,945	233,025,512	558,128,767	133,169,858	71,142,433
1900	1,487,044,814	358,651,004	222,417,207	525,616,808	127,681,174	68,470,281
1899	1,313,610,118	315,653,188	189,018,091	456,641,119	109,503,545	55,711,877
1898	1,247,325,621	305,945,576	178,068,554	429,852,345	106,000,645	51,326,049
1897	1,122,089,773	288,023,883	159,192,848	389,565,009	97,235,632	45,698,765

YEAR ENDING JUNE 30—	Number of tons carried one mile.			Miles of line represented.		
	UNITED STATES.	GROUP II.	GROUP III.	UNITED STATES.	GROUP II.	GROUP III.
'1902	147,077,136,040	41,649,968,786	29,414,833,857	195,385,53	21,612.08	25,763.02
1901	141,599,157,270	41,275,547,319	29,298,266,712	195,561.92	21,880.68	23,998.09
1900	138,667,257,153	37,462,483,496	25,076,822,881	192,556.03	21,717.86	23,985.59
1899	114,077,576,805	34,548,543,175	21,846,965,138	187,534.68	21,114.27	24,051.57
1898	95,139,022,225	29,579,613,559	17,587,334,609	184,648.26	20,946.16	23,929.35
1897				183,284.25	20,967.59	23,363.22

'From Preliminary Report.

This indicates that our railways, taken as a whole, as well as in the particular section under consideration, are prosperous, but it is hardly sufficiently definite to warrant the formation of a conclusion as to the particular lines before us. Moreover, the reports from which the above compilation is made only come down to June 30, 1902, and the railways earnestly insist that since the spring of that year the expenses of operation have materially increased, both by advances in the cost of supplies and especially by increased wages to employees.

The prices of almost all supplies used in railway construction and operation advanced phenomenally from 1897 to 1902. For the purpose of ascertaining the history of the prices of these articles since, carriers were requested to make detailed statements from actual purchases at or about May, 1900, May, 1902, and December, 1902. Several of the railways before us have filed, in answer to this inquiry, extended statements. It seems unnecessary to enter into a consideration of this aspect of the case in much detail, but this general observation may be made: Between May, 1900, and May, 1902, some articles had declined, others advanced. Steel rails, for example, had fallen in price; ties and other lumber had increased. On the whole it fairly appears that there was between those two dates a distinct increase, though not great, in the average cost of railway material. Between May, 1902, and December of the same year a very marked advance had taken place in case of certain commodities, mainly due, in our opinion, to the disturbances of the past season in the production of coal. Coal itself is by far the most important commodity used in the operation of a railway. Many railways which had no outstanding contracts, which did not own their mines, nor operate in the region of mines, so as to be able to control the price, have been obliged to pay much more for their fuel during the past winter than for many years previous, and this item alone has added very materially to the cost of operation. For example, the Michigan Central Railroad Company paid during the eight months from May to December, inclusive, of the year 1902, an average price of \$2.31 per ton, as against \$1.79 for the corresponding months of 1901 and \$1.87 for the same months in 1900. That company during these months in 1902, used over 488,000 tons. Many iron articles which enter largely

into the maintenance of a railway have also risen in price in sympathy with the coal situation.

This condition will not be permanent. It is likely that the price of coal may be somewhat higher than in recent years, since the cost of mining will probably be somewhat increased by increased wages, but it can be safely assumed that the price of fuel and the price of other articles which have temporarily advanced will soon return to their normal level. If commercial prosperity continues prices may in the future somewhat further advance, but in this case there will be a corresponding or even greater increase in traffic. Should tonnage fall off largely prices in railway supplies will almost inevitably decline.

With the cost of labor it is otherwise. While there had been up to the present year a gradual advance in railway wages, that advance had been nothing like as great as the increase in traffic or in the cost of supplies. Beginning with 1902 there have been very marked increases in the wages of railway employees, and others are in contemplation. This adds largely to operating expenses and must strongly tend to reduce net revenues. In view of this it seems necessary to examine the financial showing of some of the principal lines interested, for the purpose of determining whether the claim of the carriers that they ought to advance rates for the sake of increasing their gross revenues is well founded.

The railroad company first named in the order for this investigation is the Michigan Central. That company owns 270 miles of railway and leases 1,387 miles, making a total operated mileage of 1,657 miles. Its funded debt, according to its last return to the Commission, is \$19,545 per mile. Its outstanding capital stock is \$18,738,000, or \$69,382 per mile, making a total capitalization of, approximately, \$90,000 per mile. The attorney of that company, who appeared as a witness upon the second hearing, testified that the capital stock of the Michigan Central Company represented actual money; that in the past this company had paid a dividend on the average of about four per cent upon this stock, and that in his opinion it should make such earnings as would enable it to continue payment at that rate in the future. We agree with him that the capitalization of this company is not excessive, and that it, as located, ought to pay its

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stockholders at least four per cent upon their investment. Can it reasonably expect to do so without an advance in its rates?

The net income for the year ending June 30, 1902, from all sources, being mainly from operation, was \$4,393,506. Out of this the company paid interest on its funded debt, rentals for leased roads, taxes amounting to over \$500,000, set aside \$210,000 for certain permanent improvements, paid a dividend of four per cent upon its stock, and had remaining \$141,646. It is said, however, that owing to the large increase in wages paid its employees this showing will not be equally favorable for the year to come. The testimony shows that increases in wages already made and to be made in the immediate future will cost this company something over \$700,000 per annum. Granting that increase of traffic may keep pace with increased cost of materials, how is this large item to be taken care of so that net earnings may not be correspondingly reduced?

An examination of the funded debt of this company shows that its consolidated mortgage to the amount of \$8,000,000, bearing interest at the rate of 7 per cent, fell due May 1, 1902, and that another mortgage of \$2,000,000, bearing interest at the rate of 5 per cent, also fell due on the same date. These mortgages have been refunded upon a basis of 3½ per cent, but it also appears in testimony that the debt itself has been increased \$2,000,000. The net result of the whole transaction would be a saving in interest to the company of \$240,000.

We have already seen that the published rates upon grain and grain products have not in the past been received, and the same is true of many other commodities. The testimony of the traffic manager of this company was that at the present time published rates are maintained, and a considerable saving must accrue from this source. On page 35 of the annual statistical report made to the Commission, carriers are required to state what overcharges or other repayments have been made to shippers during the current year. In its report for the year ending June 30, 1902, this company reported under this item, \$1,342,900. Evidently this enormous amount could not be made up entirely of legitimate repayments, and the traffic manager of the company stated upon the first hearing that a considerable portion of the item consisted of rebates. The different carriers were asked to state the amount

of rebates paid during the last year, and in answer to this question the Michigan Central Company stated that this sum amounted, during the fiscal year 1902, to "approximately" \$586,000. In view of the figures appearing in the statistical report, and the testimony upon the first hearing, it is somewhat surprising that the item should be so small, but we accept it as given. Assuming the amount of traffic continues the same, and it has in fact increased, a saving of \$586,000 per annum is effected by this company through a maintenance of its rates. This, together with the saving in its interest account, gives it \$826,000 with which to offset the increased labor charge of \$700,000.

But it may be urged that after paying its fixed charges, taxes and dividend out of its net income for the year 1902, it had left but a comparatively small amount. That year was one of prosperity, and it can hardly be expected that conditions will continue without interruption as favorable. Ought not a railway to be allowed to accumulate, in some form, a surplus during fat years which may tide over subsequent lean years? To this we would unhesitatingly answer in the affirmative. In times like the present a railroad company should be allowed to earn something more than a merely fair return upon the investment; but we also think that it clearly appears that the Michigan Central is doing this.

Within recent years this railroad, in common with many others in the United States, has been extensively improved. Grades have been eliminated, curves reduced, wood bridges replaced with those of iron and stone, station buildings rebuilt, equipment of all kinds greatly added to. All this has been rendered necessary, partly by increase in traffic and partly by the desire to handle this traffic in the cheapest possible manner; and it adds very materially to the value and the earning capacity of the property. Now, in so far as these outlays are reasonably necessary to keep the property up to its former standard, or perhaps to even a higher standard of operation, they are properly a part of the operating expenses of the road, but when they add to the earning capacity of the property, and therefore to its value, they are in the nature of a permanent improvement.

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Assuming that the stockholder is only entitled to exact from the public a certain amount for the performance of the service, he clearly has no right to both receive that amount in dividends and add to the productive value of his property. The policy of the Michigan Central has been to make these improvements, not by adding to the debt or the capital stock of the company, but out of its gross earnings as a part of the operating expenses.

The following is a table, showing for the last ten years the gross earnings and the percentage of operating expenses of this company:

Year ending June 30—	Gross earnings from operation.	Percentage of operating expenses to earnings.
1902.....	\$18,763,890	76.93
1901.....	17,337,483	76.85
1900.....	16,447,575	76.12
1899.....	14,328,580	72.47
1898.....	14,127,102	72.99
1897.....	13,646,138	72.26
1896.....	14,118,198	72.21
1895.....	12,910,827	70.03
1894.....	14,250,487	72.36
1893.....	17,996,638	74.76

From this it will be seen that the lowest percentage of operation occurred in that year when the gross receipts were the least, and that, generally speaking, the percentage has increased with the increase in gross earnings. This is not because it costs more in proportion to maintain this property and handle this traffic when tonnage is heavy and receipts are large. It would naturally be expected that the percentage would fall under these circumstances, and in the United States as a whole the percentage during these ten years has fallen. It means in this case that the Michigan Central Company has been rebuilding and adding to the value of its road as a part of its operating expenses. Thus it appears that during the year 1895 repairs to roadway were \$830,436, while in 1902 they were \$1,952,545; that in 1895 renewals to bridges were \$133,734, in 1902 they were \$412,576; in 1895 repairs and renewals of locomotives were \$352,185, in 1902 they were \$1,219,184. It follows, therefore,

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that this company is during these years of prosperity laying by in the best possible form a fund which will tide it over any future period of adversity.

This same fact more clearly appears in another form. Railway companies are required to state in their annual reports to the Commission what amount has been expended for permanent improvements which is charged as a part of operating expenses. This company reports for the last three years the following amounts under this head:

1900.....	\$1,101,271;
1901.....	1,181,618;
1902.....	1,383,939.

If, therefore, its accounts had been kept as those of most railroad companies are, and as they should be in order to make a fair exhibition of this matter, it would appear, upon its own showing, that for the last three years it had earned, not four per cent upon its capital stock, but from 10 to 12 per cent. The Attorney of the Michigan Central stated that the taxes paid by that company would show an increase of \$250,000 for the present year, as compared with 1902; and this is, perhaps, as subsequently stated, to an extent in the nature of an operating charge. Increased cost of supplies, mainly due to the enhanced price of coal, may cause a temporary increase in operating expenses which will not be entirely overcome during the current year by benefit from increased traffic; but it is apparent that this company, without any advance in rates beyond what are sanctioned by this report and will accrue from a maintenance of the published schedule, must earn from two to three times the dividend which it has in recent years paid its stockholders.

It is urged that railroads ought to participate in the era of universal prosperity. The highest price which the stock of the Michigan Central Company commanded during the year 1896 was 977/8. During the year 1902 it reached \$192 per share, an increase of almost 100 per cent. This indicates that even if the market value were to decline somewhat the stockholders would still fairly participate in our prosperous conditions.

We have examined somewhat at length the financial showing
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of this company, because of all those which we shall have occasion to consider, its gross and net earnings per mile are much the smallest.

The Lake Shore & Michigan Southern Railway operates 1,411 miles, of which it leases 551 and owns 860. Its funded debt is \$46,608 per mile, and its capital stock \$57,579 per mile, making a total capitalization of, approximately, \$104,000 per mile.

Its total net income during the year 1902 was \$10,949,010, of which \$9,449,671 was from operation. After paying out of this income the interest on its funded debt, the rent upon its leased lines, its taxes, a dividend of 10 per cent on a small amount of preferred stock and 7 per cent upon its common stock, there was still remaining \$3,491,776.

These are the net earnings, according to the method of book-keeping employed by that company; its actual net earnings were much greater, for the reason that it, like the Michigan Central, charges its permanent improvements to operation. It does not, however, like the Michigan Central, specify in its annual report the amount of such improvements which have been made from gross earnings, so that upon this point we are left without reliable information. An examination of its annual report shows that this amount must be large. It does not seem necessary to give in detail the figures in this connection, but it may be noted that for the last eleven years its gross receipts were smallest in 1897, being \$19,688,918, of which 63.06 per cent was used in operation. In the year 1902 the gross receipts had increased to \$29,836,595, and the percentage of operating expenses had risen to 68.33. There are few railroads in the United States which can be operated more economically than the Lake Shore & Michigan Southern, and the above statement can only mean that during the year 1902 very large amounts were devoted to the permanent improvement of the property, which further appears from a somewhat more detailed comparison of expenditures for those years included in operating expenses. For instance, in 1897, \$196,048 were expended in repairs and renewals of buildings, against \$1,389,150 in 1902; \$646,993 in repairs and renewals of locomotives in 1897, as against \$2,088,338 in 1902. If the accounts of this company

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were kept upon the basis generally accepted as correct by railroad accountants, and adopted and prescribed by this Commission, the net earnings would be vastly increased from those previously given.

It was not definitely stated by what amount the wages paid employees had been or would be increased by this company, but it was intimated that this would equal at least ten per cent. Upon that basis this item would increase operating expenses by about \$1,000,000. According to its returns for the year 1902 the amount of "Overcharges paid shippers" was \$1,346,178. The traffic manager of the company testified that this item consisted largely of rebates, and further said that their rebates might amount to five per cent of their freight receipts, which were for the year something over \$21,000,000. He also said that rates upon his road were now absolutely maintained. It will be observed therefore that this company by a simple maintenance of its published rates saves a sufficient amount to offset the increased cost of labor.

The Lake Shore & Michigan Southern, on June 30, 1901, owned a majority of the capital stock of its competitor, the New York, Chicago & St. Louis Railroad Company, a majority of the capital stock of its connection, the Pittsburg & Lake Erie Railroad Company, almost one-half of the capital stock of the Lake Erie & Western Railroad Company, and \$11,224,000 of the capital stock of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, besides smaller holdings in other companies. These stocks had been acquired, in addition to the payment of dividends not less than 6 per cent, for many years, out of net earnings. During the year 1902 it purchased, apparently out of surplus, \$4,728,200 of the capital stock of the Indiana, Illinois & Iowa Railroad Company, the entire capital being \$5,000,000.

This company after paying 7 per cent dividend to its stockholders has a surplus each year sufficient to buy the control of a very considerable railroad. Before holding that its revenues ought to be further increased, or that the government ought not to exercise any supervision over those revenues, it may be well to consider what the bearing of this process, continued for half

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a century, is to be upon two of the great economical problems before us, namely, the distribution of wealth, and the control of the avenues of transportation.

It is pertinent to notice in this connection the price of the capital stock of this company, which was at the highest \$156 in 1896 and \$340 in 1902.

The financial showing made by the New York Central & Hudson River Railroad Company is less satisfactory in some respects than that of the two members of the Vanderbilt System already examined. It owns 810 miles of railroad, and leased during the year 1902, 2,509 miles, making a total of 3,319 miles operated. Its funded debt is \$193,778,355, or \$239,159 per mile, and its capital stock outstanding \$131,912,900, or \$162,805 per mile, making a total capitalization of \$401,965 per mile.

Its net income for the year 1902 from all sources was \$28,966,629, of which \$24,090,606 were from operation. After paying interest on its funded debt, fixed charges and taxes, and a dividend of 5 per cent upon its capital stock, there was remaining \$2,055,307.

The various carriers were asked to indicate, among other things, advances which had been made or were to be made in wages. This company filed no statement showing the amount of these advances, but it is fairly inferable from the testimony that they would aggregate something less than an average of 10 per cent. A portion of these advances had been made previous to June 30, 1902, and appeared therefore in the operations for the year covered by the report as of that date. The total amount paid out for wages during that year was \$29,000,000, in round numbers, and it seems fair to presume that this amount will be increased by from \$2,000,000 to \$2,500,000 during the present year. This would be somewhat more than enough to wipe out the surplus which the company had during the year 1902, and would apparently render it uncertain whether it could continue its payment of 5 per cent dividends, even in the present tide of railroad prosperity. As bearing upon this, however, certain other considerations must be taken into account.

It appears from the annual report of this company to the Commission that during the year 1902 "Overcharges to ship-

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pers" amounted to \$1,916,900. No answer was made to the inquiry of the Commission as to the amount of rebates paid during this year, but it is safe to assume from the condition of things found upon the Michigan Central and the Lake Shore & Michigan Southern, that at least \$1,000,000 of the amount above mentioned represents repayments of that nature. The maintenance of rates which this company, in common with others, is now insisting upon will save it \$1,000,000 annually.

It is evident also that while the New York Central & Hudson River Company does not professedly charge permanent improvements against operating expenses, a very liberal rule is adopted as to what are properly renewals and what are permanent improvements. Its gross receipts in the year 1900 were \$54,000,000, and its operating expenses 62.39 per cent. In 1902 its gross receipts were \$70,000,000, and its operating expenses 66.04 per cent. The great increase in earnings is due to the fact that the Boston & Albany is included for the last year and not for the year before. The percentage of operating expenses of the Boston & Albany, when operated as an independent line during 1901, was, however, but 64.70, and the taking on of that road could hardly account for the increased percentage upon the entire system. That this is probably due somewhat to improvement of the property appears from the fact that repairs of roadway in 1900 were \$3,400,000, as against \$4,700,000 in 1902; repairs and renewals of locomotives were \$1,900,000 in 1900 and \$3,600,000 in 1902; repairs and renewals of passenger cars were \$300,000 in 1900 and \$1,400,000 in 1902.

It should also be noticed that the period of depression last encountered produced a comparatively slight effect upon the revenues of this company. In 1893 its gross receipts were \$46,000,000, and in 1899 they were again, in round numbers, the same. In the five intervening years they had been \$42,000,000; \$41,000,000; \$44,000,000; \$43,000,000, and \$45,000,000, respectively. In 1900 an addition was made to the operated mileage, and again in 1902, so that subsequent years are valueless for the purpose of comparison. It is evident that a period of adversity, if it came, would not affect this company as seriously as many others. It seems hardly probable that it would find any difficulty in continuing the payment of its pres-

ent dividend without any advance in rates, provided it charges against operating expenses nothing except what is fairly necessary for the maintenance of its property.

It should be further observed that no examination like the above furnishes a reasonable test of the actual financial conditions or necessities of this corporation. The New York Central & Hudson River Railroad Company owns \$16,814,300 of the capital stock of the Michigan Central Railroad Company, of which the entire amount outstanding is \$18,738,000; and also owns \$45,289,200 of the \$50,000,000 of the capital stock of the Lake Shore & Michigan Southern Railway Company. These properties, although for convenience operated separately, are really a part of the New York Central System. We have seen that the Michigan Central is earning and will continue to earn under present conditions, without any advance in rates, from 10 to 12 per cent upon its capital stock, of which it pays 4 per cent in dividends and adds the balance to its property; that the Lake Shore & Michigan Southern, after paying a dividend of 7 per cent, has remaining, upon any correct system of bookkeeping, a surplus of from \$3,000,000 to \$5,000,000 per year. This belongs to the stockholders of the New York Central Company and adds permanently to the value of their stock if they prefer to leave it to accumulate rather than to take it in dividends.

The net earnings upon the 3,319 miles of this system were, during the fiscal year 1902, \$7,257 per mile. The average in the whole United States during the same period was approximately \$3,100 per mile; those of the Michigan Central were \$2,610; those of the Lake Shore \$6,696, and those of the Southern Railway, one of the defendants in this proceeding, operating 6,700 miles, \$1,790 per mile. The New York Central possesses terminal facilities of great value. It has four tracks two-thirds of the way from New York to Buffalo; the West Shore, which is one of its operated lines, has two tracks three-fourths of the distance between New York and Buffalo; and the Boston & Albany is double-tracked from Albany to Boston. Its earnings ought reasonably to be large. Still it is evident that net earnings to this amount as applied to its entire system must afford a handsome return upon the amount actually invested.

The value of its capital stock indicates that its stockholders

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have already participated in the general prosperity. The highest point reached in 1896 was 99½¢. The highest in 1902 was 168½¢.

The Pennsylvania Railroad Company owns 838 miles of single track, and operates 2,906 miles; a total of 3,764 miles. Its funded debt is \$107,958,840, or \$125.783 per mile, and its capital stock outstanding is \$204,374,850, or \$238.121 per mile; a total capitalization of \$363,906 per mile.

Its income from all sources for the year 1902 was \$46,832,530, of which \$37,552,506 was from operation. After paying its interest, rents, taxes, and a dividend of 6½ per cent upon its stock, there remained a surplus of more than \$11,000,000, which seems to have been devoted to the permanent improvement of the property.

The total amount of wages paid by this company during the last year was \$47,000,000, and an increase of 10 per cent would cost the company \$4,700,000. It was said in testimony that the actual increase would be even greater than this, approximately \$6,000,000 annually. This company in the past has paid no rebates of consequence. It makes no answer whatever to this question in its annual statistical report. In answering our inquiry as to the amount of rebates paid during the fiscal year 1902 it is stated that this was "approximately \$110,000." It is extremely gratifying, and somewhat surprising, to know that this railway has been able to keep itself free from the demoralization of rates which has existed among its rivals. The Pennsylvania Railroad Company is, however, abundantly able, independently of gain from this quarter, to meet the increase in its pay roll from other sources. It could during the year 1902 have paid its employees \$6,000,000 more than it did, paid its stockholders the dividend which it did and still have had a surplus of nearly \$6,000,000 remaining.

This company, even more than the New York Central, is not only a railroad operating company, but a great stockholding corporation. It owns stocks in other corporations, mostly railroads, to the amount of \$251,000,000, and bonds to the amount of nearly \$43,000,000. Its stock ownership includes the entire capital stock of the Pennsylvania Company, which in its turn owns stocks of the par value of \$140,000,000, and bonds of the par value of more than \$11,000,000. To what extent these stocks,

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upon the basis of cost, inure to the benefit of stockholders in the way of present dividends, or prospective benefits, does not appear. Its operations do show great prosperity; gross receipts from the same mileage increased from \$95,000,000 in 1901 to \$105,000,000 in 1902, and net earnings from \$8,991 to \$10,054 per mile for the entire mileage operated.

The Pennsylvania Company, of which the stock, as just stated, is entirely owned by the Pennsylvania Railroad Company, owns no railroad, but operates, under lease, 1,407 miles. It has a funded debt of \$59,773,614, and capital stock outstanding of \$40,000,000.

Its entire income for the year 1902 was \$15,123,873, of which \$9,864,059 were from operation. Out of this income it paid interest on its funded debt, rents and taxes, about \$1,000,000 on account of sinking fund, 5 per cent dividend upon its stock, and had remaining \$3,300,000.

During that year this company paid out in wages, approximately, \$12,000,000. An increase of 10 per cent would add to its pay roll \$1,200,000, and if the rate of increase upon this system were the same as upon lines of the Pennsylvania Railroad Company that addition would be \$1,500,000.

This company did apparently during the year pay more or less in rebates, since its annual report shows that repayments to shippers aggregated \$1,297,467. Assuming that one-half this amount, or indeed a much less sum, will be saved by the maintenance of rates, it could advance the wages of its employees as above and still have remaining a surplus of over \$2,000,000. In other words, the company would earn, approximately, 8 per cent upon its stock.

The Pennsylvania Company, as already stated, is a large holding corporation, more than one-third of its entire income for the year 1902 being derived from stocks and bonds owned by it, and it might with some force be claimed that any profit over cost which the company derived from this source ought not to be taken into account in determining whether the rates charged upon its railway were reasonable. Perhaps, therefore, we ought to consider simply the results of operation.

No information has been furnished as to the cost of construction or the cost of reproduction. It appeared in a general way that.

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these lines of railway extended through a country where no extraordinary difficulties in construction were encountered. About one-third of the system is double track; the balance single track. To what extent it possesses expensive terminals did not definitely appear. This system earned during the year 1902 \$21,775 per mile, gross, upon its entire mileage, and \$7,048 per mile net, an increase over the previous year of nearly \$900 per mile in net earnings, and a return of 6 per cent upon an average capitalization of nearly \$120,000 per mile. When these figures are compared with those given in connection with the net earnings of the New York Central & Hudson River Company it seems probable that even upon the basis of 1901 this property is yielding a munificent return upon the investment.

The principal road included in this system, and the one over which most of this grain traffic would pass, is the Pittsburgh, Fort Wayne & Chicago Railway, extending from Pittsburg to Chicago, a distance of about 468 miles. This company has a funded debt of about \$12,000,000, or \$26,410 per mile, and a capital stock of \$12,000,000, or \$90,083 per mile. By way of rental the Pennsylvania Company, during 1902, paid 7 per cent upon the bonds, 7 per cent upon the preferred and 9 per cent upon the common stock of the company.

Whether this matter be considered from the standpoint of the owners of the railroad itself, or from the mere operating results of the system, or from the financial results of the Pennsylvania Company, it would appear that after allowing for the advance in wages there is still abundant profit left.

The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company owns 1,095 miles and leases 320 miles, making a total of \$1,415 in operated mileage. Its total debt is \$47,406 per mile of road owned, and its capital stock, which is divided about equally between common and preferred, is \$43,864 per mile, or a total capitalization of, approximately, \$91,000 per mile.

Its income, which is practically all from operation, was, during the year 1902, \$8,241,172. After paying interest on its funded debt, rents, taxes, a dividend of 4 per cent upon the preferred stock and 2½ per cent upon the common stock, there remained something over \$2,000,000 in the way of surplus, most

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of which was devoted to the permanent improvement of the property.

This company paid during that year about \$10,000,000 in wages. Upon the assumption that the same rate of increase would occur upon this system as upon the lines operated by the Pennsylvania Railroad Company, the total addition to its wage account would be some \$1,200,000 per year. It paid back to shippers, \$406,731, but it does not appear what, if any, portion of it was due to deviation from the published rate. Assuming that none of it was, and that nothing therefore would be gained by the present maintenance of rates, this company could at the old rates advance the wages of its employees 12 per cent, pay the dividends of 1902, and have left a surplus of \$1,000,000.

The railroad of this system is almost entirely a single-track line. It was not unusually expensive to construct, nor does it appear that its terminal facilities are of great value. Its net earnings per mile in 1901 were \$5,059, and in 1902, \$5,791. If the wages of its employees had been advanced during the year 1902 by the amount above indicated there would have been an increase in net earnings over the previous year. Five thousand dollars a mile net must provide a handsome return upon the just value of a railroad of this character, although the showing is not as decisive as in case of the Pennsylvania Company or the Pennsylvania Railroad Company.

The stock of the Pennsylvania Company is entirely owned by the Pennsylvania Railroad Company, and has therefore no market value. The value of the stock of the Pennsylvania Railroad Company rose from 109½, the highest in 1896, to 170 in 1902; that of the Pittsburgh, Cincinnati, Chicago & St. Louis from 181¼ in 1896 to 105½ in 1902.

We have now examined upon this proposition the main lines of the Vanderbilt and the Pennsylvania systems. It appears that for the last three years in all instances gross earnings have steadily increased; that in most instances where permanent improvements have not been charged against operating expenses net earnings have increased in even greater proportion; that the stocks of these companies have advanced from 50 to 100 per cent in market value; that net earnings per mile are in every case large and must yield an abundant return upon a fair valuation of the

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properties. There is probably no case in which the rate of dividend paid in 1902 cannot be maintained without any advance in rates, beyond those sanctioned in this report, notwithstanding the material increase in wages. While we are not prepared to hold that these returns are excessive, nor that rates ought to be reduced for that reason, we are clearly of the opinion that they in no respect indicate that rates should be advanced.

It is quite probable that the net returns of these companies for the present year may be somewhat less than for the past.

The market value of their stocks is now, April 1, 1903, considerably below the highest point reached in 1902. The increase in wages has been made at a single bound, while increase in traffic and net revenues has been gradual. Even if somewhat reduced, those returns will still show a vast improvement over four years ago, in most instances over two years ago, and will give to stockholders an abundant share in the general prosperity.

Let it be carefully observed that this does not amount to a holding that rates shall in no case be advanced. They may be advanced, as in case of iron articles, where they have been depressed by commercial conditions. They may be advanced, as in case of provisions, by the withdrawal of low export rates. They may be advanced enormously by maintaining the published rate, and such advances will go far towards offsetting, indeed in many instances will entirely offset, the increased cost of operation.

The question now presents itself, must we go further and examine the financial showing of other lines in determining what rate shall be applied by these lines? The transportation charge must be the same by all routes. Whatever rate is made on grain from Chicago to New York by the Vanderbilt System must determine the rate between that point and the Atlantic Seaboard by all routes. Since the fixing of a rate upon that system indirectly determines what that charge shall be upon all other roads, should we, by reason of this indirect effect, consider the condition of those roads?

It might be manifestly unfair to select a single advantageous line and make that the standard. We have seen that grain can be transported under actual conditions by the Lake Shore and the New York Central Railroads from Chicago to New York at a cost less than that by most other routes. It would be hardly just

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to these other routes to compel the putting in of a rate upon that line which was reasonable with respect to it alone and which had no reference to its competitors. Upon the other hand, it would be equally unfair to the public if the most expensive line were made the standard. The Southern Railway carries grain to some extent to Norfolk, Virginia. The distance is fully as great; and the rate less than to New York. Its operation is expensive; its tonnage comparatively light; its net earnings per mile only about \$1,760. A rate to the Seaboard which upon any fair basis of compensation to investment would be reasonable for that company would be extravagantly high for the trunk lines. To permit such a rate would be to impose upon the general public the payment of an exorbitant charge.

We are inclined to think that in the present case the public is entitled to whatever is a reasonable rate by these two great railway systems between the East and the West. The New York Central carries one-half of all the grain which reaches New York. It carries as far as Albany more than one-half that which reaches Boston, and a considerable portion through to destination. The Pennsylvania lines are not large carriers of grain to New York, but they transport one-half that going to Philadelphia and one-third that taken to Baltimore. The great bulk of export grain which moves to the Atlantic Seaboard passes out through these four ports; and the movement of export grain perhaps roughly indicates that of domestic. Should these carriers be allowed to impose upon this vast grain traffic an unreasonable charge in order that some other railroad less favorably situated may earn dividends for its stockholders?

Two-thirds of the grain moving to Baltimore is transported by the Baltimore & Ohio, and our conclusions would be in no respect altered if we were to include that system in our examination.

Its mileage owned is 2,075, leased 1,154, a total of miles operated 3,229. Against this is a funded debt of \$70,173 per mile and a capital stock of \$42,228 per mile, of which approximately two-fifths is preferred. This makes a total capitalization of \$112,401 per mile.

In the year 1902 its net income was \$20,369,447. This paid

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the interest on its funded debt, taxes, \$1,000,000 commission on securities sold, a dividend of 2 per cent on the common stock and 4 per cent on the preferred stock, and left a surplus of \$6,000,000, which seems to have been devoted to the permanent improvement of the property.

The pay roll of this company in that year was \$24,000,000, and it is said that increases in wages will amount to fully 10 per cent of this sum. There is nothing in the statistical report to the Commission, or in its answer to the special inquiries of the Commission, showing the amount of rebates paid by this company. They must, however, from the testimony of its traffic manager, have been large, and a very substantial saving must result from the discontinuance of these practices. Assuming that nothing was to be gained in this manner, the Baltimore & Ohio Company could have increased during the year 1902 the amount paid its employees by 10 per cent and still have had remaining more than \$4,000,000 in surplus, disregarding the item of commissions on securities sold, which must assuredly be an unusual one. The net earnings per mile were \$4,931 in 1901 and \$5,599 in 1902.

The present capitalization of the Baltimore & Ohio Company is the result of a reorganization of that property, and there is nothing to show what is represented either by its common or preferred stock. It is evident that even with this increase in wages the stipulated dividend of 4 per cent can be paid upon the preferred stock, and probably a larger dividend upon the common.

These stocks seem also to have felt the pressure of good times. The voting trust was organized in 1899, and the highest point reached in that year was 85½ by the preferred and 61½ by the common, as compared with 99 and 118½ respectively in 1902.

We have also examined the financial showing, so far as can be done from the statistical reports made to the Commission and from information elicited upon the hearing, of the other railway corporations which were made parties to the original investigation, but it does not seem material to give here in detail the result of that examination, since it in no respect alters the conclusion already announced.

It appeared from the testimony that offerings of traffic are at present extremely large; that all lines are taxed to their utmost capacity, and that some have found it absolutely impossible to

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handle the amount presented. This is requiring enormous outlay in the providing of additional track facilities and the furnishing of additional equipment; and it was said that rates ought to be increased in view of this large increase in traffic, and the incident expenditures required.

The idea that increased traffic should raise rates is certainly a reversion of previous notions upon that subject. The first class rate from Chicago to New York is 75 cents per hundred pounds, and the distance is one thousand miles. The corresponding rate from Chicago to the Missouri River, one-half the distance, is 80 cents. Rates generally in western territory are higher than those in trunk line territory, and it has commonly been understood that this was due to the greater density of traffic in the latter section. Without doubt this increased demand upon railways is requiring the expenditure of large amounts, but there is nothing in this which would justify an advance of rates so long as that expenditure will add proportionately to the earning capacity of the properties.

The newspapers announce that the Pennsylvania Railroad Company has just very largely increased its capital stock, and the statement published in connection with notice of this action is that the proceeds of this new stock are to be used in extending the facilities of the company to enable it to handle the largely increased traffic which comes to it. It is said an additional track is to be constructed along a very considerable portion of the main line of that road. Certainly no investment which that company has ought to yield a better return than this. It will increase by one track the capacity of the railroad. It will represent in capital stock only the actual cost of present construction. It does not involve the outlay for stations and expenses of that nature which the construction of a first track includes. In its operation additional traffic can be handled more cheaply in proportion than traffic could be handled upon the tracks already existing. Clearly the fact that the volume of traffic is such as to require this outlay is not a reason why rates should be advanced, but rather why they should decline.

There is, however, one species of permanent improvement which does not add to the earning capacity of the property in proportion to its cost. This same Pennsylvania Railroad Com-

pany is about constructing in the city of Washington a new station, which involves, with the incident changes in tracks, the expenditure of a large amount of money. A portion of this is paid by the District of Columbia and the Government of the United States, but a very considerable part of the outlay must still be borne by the railways interested. This does not probably add materially to the earning power of these railroads, for the number of passengers which enter the city of Washington will not be materially increased. The convenience of operation will be somewhat greater, and the expense, owing to the abolition of flagmen and matters of this sort, may perhaps be slightly decreased; but, on the whole, here is an outlay of several millions of dollars which does not add to the earning capacity of these properties.

A portion of this outlay should clearly be made by the railroads, for it represents in a way a new construction. Since the old stations were built traffic has outgrown the accommodations furnished, and the providing of necessary facilities to handle this increased traffic now and for the future is properly an addition to the capital account of the railroads. But there is still a very large element which is intended to meet the public demand for an appropriate station erected at the Nation's Capital. It seems reasonable that the public in general ought to bear a portion of the burden which this imposes.

The same thing is true of the elevation of tracks into and through cities and the abolition of grade crossings. The shocking casualties of the last few months have drawn attention to the hazards of travel by rail, and the public will undoubtedly demand in the near future, and very likely enforce that demand by legislation, the adoption of the most improved devices which insure the safety of human life and limb. All this tends to add to the amount upon which dividends must be earned, without enlarging the capacity to earn them.

In this case we requested of the carriers a statement of improvements of this character which had been made in the past, or which might be found necessary in the future, but such request was not complied with, in most cases, and we are without any definite information touching any of the lines discussed.

Several of the carriers stated that there was a tendency upon
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the part of States and municipalities to increase the taxes levied upon railroads, and that this imposes an additional burden. Railroad property, like every other species of property, should bear its just burden of taxation. If the property has been once taxed, the stock which represents that property ought not to be taxed a second time; and when it is, the tax on the property is in the nature of an operating expense. The Attorney for the Michigan Central Railroad Company stated that the taxes against that company would be increased during the current year \$250,000 over what they were the preceding year; this being due to a change in the tax laws of the State of Michigan. It seems that this State has revised its laws relating to the taxation of railroad property upon the idea that such property has not previously paid its fair proportion. The tax is laid upon the property and franchises of the company in that State, and in that State no tax is laid upon the stock itself. It must be assumed that the law does what in theory it purports to do, and that the increase is not, therefore, unjust. If, then, the stock were entirely owned in that State, this ought not to be accounted an additional burden, since the property of the stockholder is merely required to pay what, in law, it ought to. The stock is, like a Government bond, free from taxation, and, therefore, more valuable. Generally, however, railway stocks are widely distributed, and are frequently taxable to the owner irrespective of whatever tax may have been paid by the corporation. In such cases the tax would be equitably treated like an operating expense. It is impossible to lay down any just rule of general application, although it seems likely, on the whole, that taxation should be regarded, to a degree at least, as an outlay which decreases the net return of the company. Except in case of the Michigan Central Railroad Company, no exact figures were given, and the subject was only referred to as an incident.

What has been said refers entirely to domestic rates. In October, 1896, carriers first published a tariff of 15 cents from Chicago to New York, applicable to corn, when intended for export, the domestic rate being at that time 20 cents. Since February 1st, 1899, export rates have been published applicable to all kinds of grain and grain products. These rates have generally been the same as the domestic rates upon the products of

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grain, but somewhat lower upon grain itself. Since December 8th the export rate upon grain and grain products of all kinds has been 17½ cents, with a rate of 16 cents applicable to grain when actually billed through to a foreign destination.

The grain and grain products of the United States meet in foreign markets the competition of other producing sections of the world, and it is manifestly for the interest of the producer in this country that such a rate should be made as will permit the marketing of our products, in view of this competition. Whenever a low rate is made for this purpose it would appear to be a distinct benefit to the farmer and not an unreasonable prejudice to the consumer in this country. In previous investigations with respect to these differences between export and domestic rates, and also into low export rates, we became satisfied that while these lower rates were often induced by bona fide market competition of the kind above indicated, they were more frequently the result of competition through different ports in our own country. The dealer in grain through New York was bidding against the dealer through New Orleans, with the result that the price was reduced in the foreign market and not advanced in our own market. In this event such competition would plainly inure to the benefit of the foreigner. We have somewhat doubted whether any valid reason exists for much of the difference between export and domestic rates upon grain and grain products through the port of New York; there must be a difference through other ports in competition with New York. However, this is properly a question of competitive conditions which the carrier should be allowed to meet in its own judgment. In our opinion there was no excuse for advancing the domestic rate from 17½ cents to 20 cents. The advance of the export rate to 17½ cents is not criticized.

It is also undoubtedly true that during the period of navigation carriers must, with respect certainly to this export traffic, meet water competition by the Great Lakes and the Erie Canal and the River St. Lawrence upon the north and the Mississippi River upon the south, and this water competition must produce some effect upon domestic rates. That, however, is also a competitive condition which carriers are at liberty to meet as it arises.

What has been said with respect to grain applies generally to 9 I. C. C. REP.

the products of grain. Flour and meal can be loaded about as heavily and moved at approximately the same expense as the grain out of which they are manufactured. This Commission held in a former investigation that a somewhat higher rate might be applied to export flour than to wheat, since the cost of service was somewhat greater; but this was due mainly to the fact that the export rate upon flour was for delivery on ship-board, while the rate upon wheat only carried it to the ship's side. Grain is esteemed a somewhat more desirable species of traffic than its products. Actual loadings of grain products are probably lighter by considerable than those of grain, and if so, the actual expense of transportation is greater. This is partly due to the fact that carriers use their cars of greatest capacity in the transportation of grain, and furnish those for the transportation of flour which cannot be as heavily loaded, and partly to the fact that commercial conditions require in some cases a smaller carload of the product. So far as this is due to the failure of the carrier to provide cars of the proper size, the shipper is not to blame; so far as the miller requires a lighter minimum, he may be properly called upon to pay an increased charge.

It was said upon the hearing that while the nominal rate from Chicago to New York was 17½ cents, the actual rate received by carriers transporting this grain between those points was less. Rates generally from the Mississippi River to New York are 16 per cent higher than those from Chicago, but carriers from the Mississippi River to Chicago receive for their division 20 per cent of the through rate.

Every rate properly includes an originating and a delivering charge. While no grain is grown in the City of Chicago, there are many points which take the Chicago rate, and in case of grain from these stations the entire 17½ cents is received. When grain originates west of Chicago and is delivered to a line at that point for transportation to New York, this line does not bear the originating charge, and in justice ought not, perhaps, to receive for its division the entire Chicago-New York rate. In so far, however, as this traffic is regarded as specially desirable, by reason of being received in large quantities at Chicago and Chicago junctions, it would be fair to consider the division actually received by the eastern line, and this, as already said, is something

less than the Chicago rate. The entire through rate is what interests the public, and in so far as a carrier gives up a part of its fair division for the sake of obtaining business the public is not concerned.

Carriers were asked to consider and state to the Commission what standard should be adopted by which to test the reasonableness of these advances. All the witnesses agreed in suggesting that increased operating expenses required additional gross revenue. That aspect of the case has been fully considered. Upon the holding in this report very considerable advances are permitted. Advances like those in the iron schedule, like those resulting from the withdrawal of export rates, like those in case of dressed beef, must very largely increase the gross earnings of these companies. In the matter of these grain rates the maintenance of the published tariff adds from 2 to 5 cents per hundred pounds—from 10 to 40 per cent—to the rates actually received in recent years. We do not find in the financial showing of these carriers any justification for their advance of the domestic rate on grain and grain products. The rate of 17½ cents is materially higher than that actually received for many years, and as high as could be maintained upon the published tariff under open competition. We see nothing from the revenue standpoint which warrants an increase of this rate. It should be noted that we have no occasion, and do not attempt, to fix any arbitrary standard by which the right of a railroad to earn should be limited.

In addition to this claim of the carriers with respect to increased operating expenses, there was the further suggestion running through the testimony of all the witnesses that, after all, a rate was purely a traffic question which could be properly estimated only by traffic and commercial conditions. The real question was said to be, Will the traffic bear these higher rates? One witness distinctly affirmed that no rate was unreasonable under which traffic would move freely, and that since it was for the interest of the carriers to move traffic, there was no probability that these rates were unreasonable, or that unreasonable rates would ever be imposed.

This idea contains a half truth. With respect to some kinds of traffic the statement is correct. It is for the interest of the railway to create business upon its line, and in the legitimate pursuit

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of that interest it fosters industries by the making of rates which would not otherwise be put in force. Such rates are applied to the opening of stone quarries, the mining of coal, the carrying of raw material to the factory, and even of the finished product from the factory. These rates do not always add that much to the total consumption or to the total production, but rather determine at what point the commodity shall be produced; and when once the differentials between different markets of consumption and supply have been determined, as at present they generally are in this country, any general increase in rates would not correspondingly limit, or any general decline quicken, the total movement of traffic. Still, the tendency of low rates is to stimulate business and in case of many rates the self-interest of carriers may be safely relied upon to prevent unjust exaction.

On the other hand, there is much traffic in which the rate does not play a conspicuous part. Fur hats, for example, move at first class rates, and six dozen of these ready for shipment weigh, approximately, 100 pounds. The cost of transporting that 100 pounds from New York, where these hats are manufactured, to Chicago, is 75 cents, or about 1 cent per hat. Evidently the number of hats worn in the city of Chicago would not be appreciably diminished if this freight rate were to be doubled. If such hats were manufactured both at New York and at Baltimore, and the rate from New York were to be increased, while that from Baltimore remained the same, this might shut up the New York factory; or, if the rate were too high, the establishment of a factory in Chicago might be induced; although this would not be true in case of hats, since the raw material, which moves at the same rate, originates on the Atlantic Seaboard. Probably the first class rate throughout all Official Classification-territory could be advanced fifty per cent without appreciably reducing the volume of traffic.

Nor is it alone with respect to high grade commodities that the volume of movement is not limited by an advance in the charge for carriage. During the year 1901 about fifty millions of tons of anthracite coal were produced and consumed in the United States. If the price of that coal had been 25 cents per ton higher to the consumer than it actually was, this would not probably have very much reduced the amount of consumption, although an

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addition of that much per ton to the freight rate would have increased the net revenues of carriers over twelve million dollars; representing, on a four per cent basis, if made permanent, three hundred million dollars of capital. These very grain rates before us furnish an excellent illustration. The advance of $2\frac{1}{2}$ cents per hundred pounds from Chicago to New York amounts to 5 cents a barrel on flour. Rates west of Chicago have also been advanced, and the total added cost from the grain field to the consumer upon the Atlantic Seaboard would be from 10 to 15 cents per barrel. Assuming that the entire additional expense were charged against the consumer, it is hardly conceivable that this increase in price would produce a material effect upon the quantity of flour transported and consumed.

As applied to the producer, the effect is somewhat greater. Five cents a hundred pounds is, approximately, 3 cents a bushel on corn. The average yield of corn in Iowa and Nebraska is about 30 bushels to the acre. Assuming, now, that the entire added cost of transportation is borne by the producer, this would reduce the price of corn 3 cents per bushel, and would decrease the net money-producing power of the land devoted to corn 90 cents per acre per year. This would not, probably, decrease the number of acres devoted to the production of grain, but it might tend to determine the kind of grain raised, or whether the grain should be shipped to market or fed in the vicinity. In point of fact these increases in the rate are not borne entirely by either the producer or the consumer, nor is it possible to determine exactly in what proportions the burden is divided. It can be positively affirmed that it is paid by one or the other, and that no increase within moderate bounds will materially affect the quantity of grain produced and moved.

When, therefore, these Traffic Managers met in New York and determined to advance these rates, they simply laid upon the people of this country a tax of $2\frac{1}{2}$ cents per hundred pounds. If they were entitled to it, that action was justified; otherwise it was unjustified. The fact that the traffic still moves, that people still eat flour and corn-meal, does not by any means conclusively show that the rate is reasonable. As we have already said, the reasonableness of every rate may be presented in two aspects: First, is it reasonable as tested by cost of service, by comparison

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with other rates, with respect, often, to commercial conditions? Second, is it reasonable as a tax imposed by a public servant for the performance of a quasi-public duty? This last test of a reasonable rate has been repeatedly considered by the Supreme Court, of the United States in a long line of cases beginning with the Granger Cases decided in 1877 and extending down to the present day.

It is often said that the reasonableness of a freight rate must be left largely to the judgment of traffic officials. This necessarily is so where the question is presented in its transportation aspect; it cannot be true where, as in the case before us, the question is largely whether the carrier has a right to advance its tariffs for the sole reason of increasing its revenues. The language of the Supreme Court of the United States from the Nebraska case, in which are enumerated the facts controlling the reasonableness of a rate considered in this aspect, has been already quoted. The attention of traffic men was called to this language, and it appeared that no one of them had in mind any of these facts or were influenced by any of these considerations in advancing the rates in question.

It was also said that there had been no general complaint against these advances, and that here was an indication that they were not unreasonable. This is another half truth. The rate which discriminates between individuals or localities positively injures some person, and that person is very likely to make complaint; sometimes he will even prosecute a complaint. The rate which is unreasonable in the sense that it is more than should be exacted for the service does not ordinarily injure the middle man. The dealer cares very little what rate he pays so long as his competitor is not more favorably treated. The unreasonableness is borne by the producer and the consumer, and the effect is so diffused as to be almost imperceptible. No one individual directly feels the injury, or is sufficiently interested to test the question by complaint.

Consider once more these grain rates. The dealer in export grain will demand a rate which will enable him to sell in the foreign market; but to the shipper of domestic grain the rate is generally a matter of indifference. He buys and he sells upon whatever rate is in effect. The multitudes who consume this grain in

the East and who raise it in the West actually pay these charges. These people may not even understand that they are wronged; certainly they cannot be expected to undergo the expense of prosecuting a complaint before the Commission and through the courts. The amounts represented by the advances under consideration must aggregate millions of dollars, but the amount taken from any one individual is slight. No single person, no collection of persons can be expected to litigate this matter. Since the whole body of the public is interested, it is but just that these questions should be tried at the public expense. And this must be if they are tried at all.

The disposition and ability to advance rates is everywhere manifest. Mr. Russel, speaking for the Michigan Central Railroad, stated that this was the beginning of an attempt to adjust the revenue of that company. Since the last hearing in this case important advances of wide application over rates long in effect have been made in various parts of the country. Today three Traffic Directors—Mr. Bird, of the Gould lines; Mr. Miller, of the Northern Pacific lines; and Mr. Stubbs, of the Union Pacific—control the traffic operations of nearly or quite 50,000 miles of railway; and three other men could be named whose voice is equally potential over 50,000 other miles—making more than one-half the railways of the United States in miles, and much more than one-half in importance. Such unification of railway control permits advances in rates and a maintenance of rates which has never before been possible. If carriers are entitled to larger returns, these increases are proper, and should be permitted; otherwise they should be checked. It cannot be accepted without careful consideration that all this vast increase in traffic, all these notable economies in railway operation are to result in the permanent imposition of higher transportation charges.

It is vitally important to the development of this country that the service performed by our railways should be efficient and complete. The wealth invested in these enterprises should be sacredly protected, and no unnecessary burden should be imposed in the way of public supervision. But it is equally important that the rates charged for the service should be just; and, in view of the monopolistic conditions under which these rates are now

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made, the public has no protection save through regulation by the Government.

The only means now provided for the correction of unreasonable rates is through the Act to regulate commerce. That Act as at first enacted contained no provision for its enforcement, and it speedily became evident that it was likely to become nugatory for the want of enforcement. To remedy this the amendment of 1889 laid upon this Commission the duty of enforcing its provisions, one of which is that rates shall be reasonable. While, as has been frequently pointed out, no effective means now exist for compelling carriers to make their charges reasonable, this Commission should exhaust what power it has in that direction, and should do so without waiting for a formal complaint. By law all rates are filed with this body, as well as elaborate statements of the financial condition and general operations of all interstate carriers. This Commission should be able to judge better than a member of the public whether these rates are just or unjust. When a schedule is filed promulgating an advance of general application, for which no apparent reason exists, we think that action should be made the subject of investigation, and that if, after such investigation, the advance appears to be unjust, such steps as are available should be taken for its correction.

We are not unmindful of the fact that in 1890 this Commission, having under consideration the reasonableness of these grain rates from Chicago to New York in connection with those prevailing in some other parts of the country, held that a rate of 20 cents on corn and 23 cents on other grain and grain products was reasonable; nor do we think that holding is in any way at variance with the conclusion reached here. The principal ground on which the Commission then based its opinion was by comparison between rates previously prevailing and those prescribed, and it was assumed, and so stated, that subsequent to the enactment of the Act to regulate commerce published rates had been observed. We now know that in point of fact these rates never were maintained for any considerable time, but that the actual rates were much lower.

Laying this entirely out of the case, it appears that in 1890 the average receipts per ton mile of all railroads were 9.41 mills,

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which in 1901 had fallen to 7.50 mills. This shows an average decline in the ton mile just about equal to the average difference between the grain rates prescribed in 1890 and those held to be reasonable now. There is scarcely a commodity of which the cost of transportation has declined as much as that of grain and the products of grain. Economies in the way of larger loads, heavier trains, and such like have been more strongly felt here than almost anywhere else. In the last three years the average receipts per ton mile have risen, but the rate for the transportation of grain has, at the same time, fallen. We think that 17½ cents today for the carriage of corn is much better than 20 cents, and as good as 23 cents, in 1890.

Our conclusion, as to the rates involved in this investigation, is that since the reduction in the iron schedule was the result of commercial conditions, that rate may have been properly increased, owing to the subsequent change in these conditions; that the increase of the rate on packing-house products by withdrawing the lower export rate is not properly an advance; and that the advance of the dressed meat rate to 45 cents ought not to be criticized under the peculiar circumstances surrounding that traffic. But we are of the opinion that the advance in the domestic rate on grain and grain products, being an advance over the highest published rate in effect for most of the four years previous and a great advance over actual rates received for the last fifteen years, is not, for the reasons set forth, justified.

This proceeding is in the form of a general investigation. Although the carriers were fully heard by their traffic representatives and, in some instances, by their attorneys, the proceeding is in a manner *ex parte*. Many facts of great importance were not brought out in this inquiry, and a further development of those facts and a further discussion of the matters involved might lead to a different conclusion. No order can be made in this investigation, but unless on or before the 15th day of May, 1903, these rates are readjusted in accordance with the views here expressed, proceedings will be begun against the several lines which will put directly at issue the rates involved.

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THE PROCTER & GAMBLE COMPANY

c.

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; AND THE BALTIMORE & OHIO RAILROAD COMPANY.

Decided April 10, 1903.

1. Although the fact that most shippers of a given article in part of a described territory were permitted to secure reduced rates by billing at net weight, while many other shippers of the same article in another portion of that territory paid higher rates through billing at the full weight of the package and its contents, is ample warrant for an order requiring the carriers to remove the unjust discrimination as between such shippers by discontinuing the practice of shipping at net weights in any part of the territory, yet, on the other hand, unless the net-weight practice was prevalent throughout substantially the whole territory affected and either authorized by carriers generally in that territory or so well known from constant and general application as to receive implied sanction, it would not of itself constitute sufficient ground for an order requiring a reduction in rates when all the carriers applied their established charges on the basis of gross weights. Decision in *Procter & Gamble v. Cincinnati, Hamilton & Dayton R. R. Co. et al.*, 4 I. C. C. Rep. 87, 3 Inters. Com. Rep. 131, which was based mainly upon testimony indicating general prevalence of the net-weight practice, held, in the light of further evidence, not controlling in this case.
2. The presumption as to the reasonableness of rates long kept in effect by carriers as a voluntary act on their part does not attach in a case where

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such rates have been established by carriers in compliance with a decision and order of the Commission.

3. Profits secured by complainant from the operation of a railway connecting with the defendant lines and from other special advantages tending to diminish the amount of its transportation expenses would have very material bearing if the sole question involved was the reasonableness of rates charged to complainant, or if the rates exacted from it were drawn into comparison with those charged to competing soap manufacturers; but where, as in this case, the chief question is as to the justice of a change in the classification of soap, not only as regards complainant, but as affecting all soap shippers in the classification territory, no order could be made respecting such change in favor of complainant which would not apply with equal force on shipments of other soap manufacturers in that territory; and as the case mainly involves the general question of classification, it must be decided in accordance with the principles which properly govern the classification of freight articles.
4. The action of defendants in placing soap in carloads with common grades of grocery and other general merchandise in the fifth class of their freight classification and refusing to reduce soap in carloads to the sixth class, which includes only low grade freights, held not to be unlawful while other articles with which carload soap is properly compared are retained in the fifth class of such classification; but this shall not operate to preclude the Commission from holding in an appropriate proceeding that fifth class rates in this territory are excessive.
5. The privilege of shipping small quantities of articles in the same class as a mixed carload is valuable to a great many shippers and is not to be condemned because it may result in some degree to the advantage of particular manufacturers or to jobbers; but when it appears, as in this case, that shippers like complainant are subjected to additional disadvantage under the operation of a mixed carload rule through the increase in a long-standing less than carload rate, the effect of that rule is properly to be considered in determining the reasonableness and justice of such increased rate.
6. The action of defendants in increasing the classification of soap in less than carloads from fourth to third class was unreasonable and unjust under the Act to regulate commerce, and their subsequent practice of applying 20 per cent less than third class rates on such traffic is also unlawful.

John W. Warrington and Mortimer Matthews for complainant.

Lawrence Maxwell for the P. R. R. Co., the P. C. C. & St. L. Ry. Co. and the C. H. & D. R. R. Co.

Edward Colston for the B. & O. S. W. Ry. Co.

S. O. Bayless for the N. Y. C. & H. R. R. R. Co., the L. S. & M. S. Ry. Co. and the C. C. C. & St. L. Ry. Co.

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REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman*:

In this case the complainant challenges the legality of the change made by defendants on January 1, 1900, in the classification of common or laundry soap from sixth to fifth class in carloads and from fourth to third class in less than carloads. The increased rates upon common or laundry soap resulting from such change in classification are alleged by complainant to be unreasonable and unjust and to subject the traffic in that commodity, both in carloads and less quantities, to undue and unreasonable prejudice and disadvantage in violation of the Act to regulate commerce.

The complaint further sets forth that some of the defendants herein and the predecessors of the other defendants were defendants in three several proceedings brought before this Commission on September 12, 1889, by the firm of Procter & Gamble, complainant's predecessor in business, in which complaints were made against the then prevailing fifth class rates upon common or laundry soap in carloads; that after investigation the Commission issued an order in those cases requiring the defendants therein to cease and desist from charging more for the transportation of carload shipments of that article than rates contemporaneously charged by them for like service in the transportation of articles in class six of the classification of freight then in force over their respective lines; that after denial by the Commission of an application for rehearing such carriers did, as finally required by the Commission, obey the order so made from January 20, 1891, until January 1, 1900, when by the change in classification above mentioned the rates upon common soap were advanced from sixth to fifth class; that such disobedience was part of a joint arrangement between the defendants in this case and all other railroads in Official Classification territory; and that by such action a number of articles were changed from lower to higher classes for the sole purpose of increasing transportation revenues.

Complainant further alleges that it prepays freight charges upon all property shipped from its factories, and demands reparation by repayment of all transportation charges in excess of sixth class rates on carloads and fourth class rates on less than

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grades of laundry or bath soaps. The complainant does not manufacture any soap used exclusively for toilet purposes. It does make and sell a brand called "Ivory Soap," which is used both for laundry and toilet purposes and which, on account of its quality and constant and thorough advertisement by complainant, has an extensive sale in all sections of the country. A large part of complainant's profits is obtained from the sale of this brand which, because of such special demand, is in the nature of a proprietary article rather than in the list of common competitive soaps, and from the manufacture and sale of glycerine, candles and some other products of its plant besides soap.

No attack is made by complainant upon defendants' classification as applied to Ivory Soap. The complaint is confined to the effect of that classification upon common laundry soap.

2. The defendants are common carriers of interstate traffic, including soap shipped by complainant and others, in the territory directly affected by this proceeding, which is, generally speaking, all that portion of the United States lying east of the Mississippi River and Chicago and north of the Ohio and Potomac Rivers. This territory is called "Official Classification territory," and the classification of freight articles transported between points in such territory is governed by what is known as the "Official Classification," which has been adopted and is generally applied by the defendants and practically all other railroad carriers therein. This classification is prepared by the "Official Classification Committee," the membership of which is composed of representatives from railway systems in the territory described. As advertised in the Official Railway Guide, the Pennsylvania, New York Central & Hudson River, Baltimore & Ohio, Lake Shore & Michigan Southern, and Cincinnati, Hamilton & Dayton, defendants in this case, are represented upon that committee. The Pittsburgh, Cincinnati, Chicago & St. Louis is controlled by the Pennsylvania Company, which is also represented in the Classification Committee. The Baltimore & Ohio Southwestern is part of the Baltimore & Ohio System.

On January 1, 1900, the classification of soap was advanced in the Official Classification from sixth to fifth class for carloads and from fourth to third class for less than carloads, and thereby

the rates upon soap shipments in the territory affected were substantially increased. Through concerted action these and numerous other advances in classification and rates were made effective on the same date and upon practically all lines in such territory. On March 10, 1900, the classification of soap in less than carloads was reduced by the Classification Committee to twenty per cent below third class, but not less than fourth class, and such intermediate class between third and fourth classes was thereupon established by the defendants and other carriers in Official Classification territory for soap in less than carloads, and also made to apply at the same time upon a number of other articles. The classification of soap as so changed and the subsequent enforcement of the higher charges are the subjects of complaint in this controversy. These classification changes were made effective in No. 20 of the Official Classification and have been continued in subsequent issues.

3. The first Official Classification was adopted and put in force by carriers throughout the territory to which it applies on April 1, 1887, four days prior to the time when the Act to regulate commerce took effect, and from that date until about June 22, 1891, common or laundry soap was in the fifth class of that classification for carloads and in fourth class for less than carloads. Prior to April 1, 1887, rates relatively the same as fifth class under Official Classification No. 1 had been applied to soap of this description. Toilet soaps shipped in any quantity were in the second class of Official Classification No. 1, that is, from and after April 1, 1887, and they were continued in that class by the carriers until some time in June, 1891, when soaps of all descriptions were placed together by the carriers in sixth class for carloads and fourth class for less than carloads. This classification of soap remained in force until January 1, 1895, when the carriers again placed soap in carloads in class 5 of the classification, but kept it in that class only about two weeks, the sixth class rating for carloads having been restored on January 15, 1895. No further change was made in the classification of this article until January 1, 1900, when the advances to fifth class, carloads, and third class, less than carloads, were made, and this action, as before found, was modified on March 10, 1900, so that 20 per

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cent less than third class rates but not lower than fourth class, were given to less than carload shipments.

4. The change made in the classification of common soap in carloads from fifth to sixth class in June, 1891, was not voluntary on the part of the carriers. That change was made in compliance with a decision of this Commission on July 17, 1890, reaffirmed upon denial of a petition for rehearing on December 26, 1890, and the final order of the Commission issued on the last-mentioned date, in the cases brought by complainant's predecessor, the firm of Procter & Gamble, against the defendants in this proceeding or their predecessors (4 I. C. C. Rep. 87, 443, 3 Inters. Com. Rep. 131, 374). The change in the classification in June, 1891, whereby toilet soaps were reduced from second class, any quantity, to fourth class for less than carloads and sixth class for carloads, and thereby made to take the rating provided for common soap, was made effective shortly after the decision of this Commission on May 16, 1891, in the case of *Beaver & Co. v. Pittsburg, Cincinnati & St. Louis Railway Company et al.* (4 I. C. C. Rep. 733, 3 Inters. Com. Rep. 564). In that case the Commission decided that—

“Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.”

The Commission found in that proceeding that “Grandpa’s Wonder Soap,” manufactured by Beaver & Co., and “Ivory Soap,” manufactured by the Procter & Gamble Co., were both represented as suitable for laundry and also for toilet purposes, and that both were used for those purposes; but the Wonder Soap had been given the higher second class rating for toilet soap and the Ivory Soap had been taking the laundry soap rate. Other soaps besides Ivory were also compared with Wonder Soap in that case. It is claimed by defendants that this decision of the Commission in the Beaver case, together with the impracticability of distinguishing between the various kinds of soap, impelled the carriers to classify all soaps alike regardless of differences in quality or the purposes for which they are used. Where, as in the case of Grandpa’s Wonder, Ivory and other soaps, the same

brand may be used both for household and toilet purposes, the difficulty of determining whether it properly belongs to the toilet or household variety is apparent, but no such difficulty presents itself in the case of soaps manufactured, sold and generally used for toilet purposes. Placing all soaps in the same class tends, however, to prevent misdescription by shippers of the more valuable grades in order to obtain rates applicable to the common variety. Toilet soaps are said to constitute only about one per cent of the total quantity of soap usually manufactured.

The change in the classification of carload soap from sixth to fifth class on January 1, 1895, was apparently not continued in effect, because lines leading from Cincinnati refused at that time to concur in the higher rating. On January 1, 1900, however, five years later, all the lines in Official Classification territory agreed upon and adopted fifth class rating for carloads and also increased the less than carload rating, as above stated.

5. The order of the Commission of July 17, 1890, required the defendant carriers in the first Procter & Gamble cases to "wholly cease and desist from charging or receiving for the transportation of common or laundry soap in carload lots any greater rate per 100 lbs. of said soap and the package containing it than is contemporaneously charged or received by them for like service in the transportation of articles enumerated in class six (6) of the classification of freight now in force over their respective lines."

This order was based upon the report and opinion therewith filed, and in such report and opinion common soap was compared with articles then carried by the carriers as sixth class freight, and it was also found that soap, while nominally in the fifth class, had nevertheless been carried up to May, 1889, at net weights, instead of gross weights including the boxes in which it was packed, and that this practice had resulted in giving such soap in carloads rates substantially equal to sixth class rates. The decision rested therefore upon two principal grounds: Comparison with sixth class articles and the net-weight practice.

An application for rehearing was subsequently filed by the defendants other than those operating lines at Ivorydale, and at the hearing upon such application affidavits were presented by the applicants for the purpose of showing that charging only for net weights had not been a general practice, but such affidavits were

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found insufficient by the Commission to indicate the error in findings alleged by the applicants, and thereupon the application for rehearing was denied.

The finding in the former cases that common soap in carloads was carried at net weights prior to May, 1889, is again attacked in this proceeding by the defendants and sought to be sustained by the complainant. A materially different showing is now made; first, the testimony of a greater number of witnesses covering many more places of distribution and containing definite statements upon the point is presented, and, second, the average weight of boxes in which soap is now packed for transportation and sale is materially less than that of the boxes formerly used for such purpose. The present record shows that up to May, 1889, from some time in 1885, and probably in earlier years, a great many shipments were carried from Buffalo, Pittsburg, Allegheny, Detroit, Chicago, Indianapolis, Cincinnati, Zanesville, St. Louis, Logansport, Rock Island, Jackson, Battle Creek, Peoria, and other western points at weights which did not include the weight of the boxes, and that this was a more or less common practice among shippers from those points and was not entirely confined to soap; that in some instances the weight paid for was even less than the weight of the soap, but that, except at Cincinnati and a few other places in that section, the practice was not carried on in accordance with an express agreement with the railway officials. It is plain, however, that the operating agents of the railways had ample opportunity to know and in most cases must have been aware of the understatements of weight by shippers. The boxes were stamped with the weights in many if not a majority of the shipments, some of which weights were stated as follows: "60 one-pound bars," "60 bars, 60 pounds," "100 cakes, 75 pounds." These weights tend to indicate the weight of the soap alone, and any doubt as to whether they were gross or net could easily have been removed by weighing a single box. The inference seems warranted that the practice of shipping at net weights from the points mentioned during a period of years was known from the weighing of the boxes by agents or their actual understanding with shippers. On the other hand, the freight agents employed by the carriers during the time mentioned who were called as witnesses by defendants testified that because

of lack of weighing facilities in some cases, and in others because of lack of time, they were unable to verify shippers' weights, and they deny, without exception, that they had any knowledge of soap having been shipped from their stations at less than gross weights. The custom of shipping at net weights certainly prevailed among shippers at the points above stated, but except at Cincinnati and points in that territory there was no understanding with the railway companies amounting to open sanction of the practice. What took place in this respect prior to April 5, 1887, when the Act to regulate commerce became effective, was not affected by any Federal regulation, and even after that date and until March 2, 1889, when the Act was amended, shippers were not specifically prohibited from indulging in underbilling. On or about May 1, 1889, the carriers established a system of inspection and weighing which, in connection with the operation of the amended statute, resulted soon afterwards in preventing or correcting underbilling very largely, and while the practice among shippers has never been wholly eradicated it has nevertheless been reduced to such extent that cases of that character are now regarded as exceptional. This underbilling of soap was practiced but little if any from 1885 to 1889 at points east of Buffalo and Pittsburg in Official Classification territory. Careful examination of the findings in the decision of the Commission in the old Procter & Gamble cases indicates that the fact as to the general prevalence of the net-weight practice was not a matter of much controversy at the original hearing, and that it was only questioned seriously, and then by means of insufficient and defective affidavits, on the application for rehearing filed by defendants in those proceedings. The evidence clearly establishes that whatever knowledge railway officials may have had of the practice, except possibly in Cincinnati and that section, it was not such an established regulation as that, after April 5, 1887, when the Act took effect, it could properly be applied by carriers as a rule governing transportation charges. The evidence also shows that numerous soap manufacturers in Official Classification territory paid on gross weights during the years mentioned. The net-weight practice so far as it obtained, was simply one of many devices resorted to by a number of shippers and tacitly per-

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mitted by some carriers, or purposely allowed by other carriers, to obtain or afford lower rates on this commodity.

The testimony in the former Procter & Gamble cases showed that the weight of the box was then about $16\frac{2}{3}$ per cent of the gross weight. It appears in this case that the percentage of weight represented by the box is not more than 11 per cent. The gross weights of packages commonly shipped by complainant are 66, 70 and 83 pounds, and the weights of the boxes used are 6, $7\frac{1}{2}$ and 8 pounds, respectively, or not far from 10 per cent of the entire package; but boxes used by some other shippers are heavier, and a fair average is believed to be about 11 per cent. Such decrease in the weight of boxes used for packing soap results from different construction and from the use of lighter lumber, such as cottonwood. The difference between sixth and fifth class rates in Official Classification Territory amounts generally to about 20 per cent of sixth class rates, and is approximately $16\frac{2}{3}$ per cent or one-sixth of the fifth class rates. While the box weighing $16\frac{2}{3}$ per cent of the total weight approximated such difference when applied to the rate, the present weight of the box, which is only 11 per cent of the total, would when applied to the rate be only about one-half of such difference between sixth and fifth class rates, conceding the difference to be 20 per cent, and something over five-eighths, if the difference in the rates is taken at $16\frac{2}{3}$ per cent.

6. In our decision of the former Procter & Gamble cases common soap in carloads was specially compared with the following articles, which were then in the sixth class of the Official Classification: Apples in bulk, cider, owner's risk prepaid; coffee; smoked fish; flour; grain; salt; starch in barrels, and sugar. In Official Classification No. 20, and in the present Classification No. 23, all of these articles except flour, grain and salt are in the fifth class. While starch is in the fifth class of the classification it is given lower commodity rates, which will be referred to further on in this report.

Comparisons were also made in the former cases with the Southern and Western Classifications. In the Southern it was found that common soap, coffee, fish, glucose, rice in barrels and sugar were in the same class, the sixth. In the present Southern

Classification laundry soap, in any quantity, is still in sixth class and castile and toilet soaps are fourth class, any quantity. Coffee, green or roasted, is fourth class, single sacks, and fifth class, double sacks, any quantity. Fish, dried or smoked, is third class, any quantity. Glucose takes molasses rates, and molasses is in the fifth class for carloads. Rice in carloads is in class D, which also covers grain, and sugar in any quantity is class 5 in barrels, boxes or double sacks, and class 4 in single sacks. In the Western Classification common soap was at the time of the former decision in fourth class, less than carloads, and fifth class, carloads, and sugar, coffee and heavy staple groceries took the same rating. In the present Western Classification soap is still so classed. Coffee takes various ratings for less than carloads, from first to fourth class, and fifth class, carloads. Sugar is fourth class, less than carloads, and fifth class, carloads. For staple grocery articles in carloads the fifth class is applied, and less than carloads take various ratings from the first to the fourth class. These ratings in the Western Classification place common soap in carloads with common groceries in the fifth class, but in the Southern common soap has been retained in the sixth class, while the ratings of some of the other articles with which it was compared in our former decision have been advanced. Commodity rates lower than sixth class are also in effect on soap to some points in the South.

7. Common soap for laundry and other household purposes is produced in practically all sections of the United States. Nearly every considerable town or city has one or more soap factories, the output from which is sold and consumed in the same locality or at nearby points, and these local plants obtain the raw material required for soap manufacture largely from the place of their location or the surrounding section of country. There are also numerous large common soap factories located in various cities throughout Official Classification territory, the product of which is sold under advertised names and shipped to jobbers who supply the retail trade generally in different sections of the country, or, as in the case of complainant, in all parts of the United States. These large manufacturers compete actively with each other in the markets of sale and consumption, and they all meet also the competition of the local factories. While those who produce soap

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extensively, and many of the smaller producers as well, advertise their brands, and thereby secure some special demand for their wares by consumers, the like grades or kinds are well understood to be capable of substitution one for another in case of difference in price or some corresponding advantage given to the retailer or inclination on the part of the consumer. Owing to such widely diffused production and slight difference in the quality of similar grades, the manufacture, distribution and sale of common soap is subject to general and severe competition.

Grease, tallow or other suitable fatty or oily substances and an alkali are necessary ingredients to saponification. The materials mainly used by complainant and other manufacturers are grease, tallow, cottonseed oil, cocoanut oil, rosin, soda and other alkalies. About 30 per cent of the weight of common soap is water. The shipment of articles used in soap-making furnishes the railroads with considerable traffic, in addition to the large quantities of soap shipped out from the factories. The complainant manufactures some 20 or 25 different brands of common soap, the best of which is called "Lenox," and this brand is sold in competition with many brands manufactured by other companies and firms. Thirty or more brands of soap are specifically referred to in the testimony.

8. In 1887 the ruling price of common soap was about \$3.50 per box of 100 cakes or 75 pounds for the better grades. In the latter part of 1899 and in 1900, about the time the changes in classification complained of were announced and took effect, the price of such soap had fallen as low as \$2.50 per box, but owing to a decided advance in the price of raw materials, and possibly the advance in freight rates, the larger soap manufacturers then increased the price from 15 to 25 cents a box. The Procter & Gamble Lenox Soap was raised from \$2.55 to \$2.70 per box at that time. Larger advances were made in the price of the cheaper grades, some of which were then selling as low as \$1.05 per box of 60 pounds. The testimony indicates that the smaller distributing manufacturers as well as the local producers were content to follow the lead of the larger concerns in making this advance. Such increase in the price of common soap exceeded the advance in the freight rates caused by the change in classification on January 1, 1900. On a percentage basis, the advance in

the price of soap was less than the advance in freight rates, but in actual amount it was much more. For example, the sixth class rate from Cincinnati to East St. Louis is 12 cents and the fifth class rate is 15 cents, a difference of three cents, while the advance per box of Lenox Soap was 15 cents, and in some instances, as above stated, the advance in the price was increased by as much as 25 cents. The freight rate was advanced 25 per cent in the case of the rate from Cincinnati to East St. Louis, while the price of Lenox Soap was increased not quite 6 per cent. Comparisons based on the rates to the east make the differences in rate caused by change in classification $4\frac{1}{2}$ and $5\frac{1}{2}$ cents, respectively, to New York and Boston. For shorter distances the increase in the carload rates was much less, amounting in some instances to not more than one cent per 100 pounds.

Representatives of soap manufacturers testified that such advance in the price of soap was not equal to the increased cost of soap material and of wood for packages. The cost of soap material and of boxes was increased in 1900 over 1898 and 1899 by large percentages, but just how much such increases in cost to the manufacturer amounted to in cents per box upon any grade was not shown, nor does any basis appear in the record upon which it can be determined. The cost of soap material in 1900 to the manufacturer was but little higher than it was in 1890 or 1891, but in those years the selling price was considerably higher. Complainant's Lenox Soap sold then for \$3.50 per box as against \$2.70 in 1900. There has been some decrease in the cost of soap manufacturing. This has not been brought about to much extent by changes in machinery or by material reduction in the cost of machinery, as the process of soap-making is simply the combination of alkali and fats by means of boiling. The saving referred to chiefly resulted from methods adopted for the recovery of glycerine, which is one of the by-products of soap. Alkali is run into the fat in liquid form, and combining with the fatty acids sets free the glycerine, which remains in solution. The water containing the glycerine is then washed out, and the glycerine is recovered by evaporation and purified by chemical treatment and distillation. By this improved process complainant appears to have been able to save about 12 cents per 100 pounds in the manufacture of its competitive soaps.

The manufacturers usually prepay the freight and sell soap delivered to the jobber. Complainant charges about 10 cents per box more in New York and New England than it does in the Central West, 5 cents per box more to some points in Missouri and Iowa, and at the Missouri River the price is scaled up to 10 cents above the price in the Central West. These higher prices per box to eastern and western territories prevailed before as well as after the advance in freight rate on January 1, 1900. The Lenox brand of complainant at \$2.70 per box of 100 cakes weighing 75 pounds (the Central West price) sells per pound to the jobber at 3.6 cents and per cake at 2.7 cents. This and other like brands are usually sold to consumers by the cake or half dozen or more cakes. The increase in the carload freight rate even at 4 cents per 100 pounds, which is more than the average increase, would, if laid upon the consumer, counting the gross weight at 83 pounds, be $3\frac{1}{3}$ cents per box, and, figured upon the pounds and number of cakes of soap in the box, less than one-half of a mill per pound and about one-third of a mill per cake. Under the general practice of prepayment of freight charges by the manufacturers, and making a common price to the jobbers as above described, and the universal competition between the manufacturers, the jobbers and the retailers, it must be evident that the increased freight rate is borne by the manufacturers and perhaps to some extent by the jobbers. The aggregate amount represented by the increase in the rate on carload soap is nevertheless very large. Roughly estimated, 65 per cent of complainant's shipments being in carloads and its output 100,000,000 pounds, an average increase in rate of, say, 3 cents per 100 pounds, means an additional freight revenue to the roads from complainant alone of \$19,500 per year.

There is a marked distinction between the effect of an advance in the freight rate on an article of merchandise which is commonly sold by the retailer in very small quantities and under conditions where such advance is not likely to burden the consumer, nor to a great extent the dealer, and the case of a like advance applied to an article like hay, for instance, which is usually sold by the bale and often by the ton, and which affects the interests of all concerned in its production, sale and use. Moreover, hay and other staple agricultural products are raised sub-

ject to varying climatic conditions affecting the amount of production which are of course quite beyond the control of the producer, and the prices for such products are fixed or largely determined by the variation in supply and demand, while, on the other hand, the producer of soap is able ordinarily to limit or increase the output of his plant to meet an assured or calculated demand, and thereby avoid a condition of overproduction and consequent decrease in the selling price of his product.

The evidence in regard to the profits of soap manufacturers generally upon common competitive soaps is rather indefinite, the estimates given running all the way from nothing to 8 per cent. Five to 8 per cent was stated for complainant's common brands. How these profits were computed or what items entered into the calculation was not shown. All the testimony on behalf of soap manufacturers was to the effect that the higher freight rate, the greater cost of raw materials and the reduced selling price for soap, have operated materially to diminish their profits, but there is no proof that the increase in freight rates resulting from higher carload classification had rendered or was likely to render the business unprofitable, or in any way undesirable. Some of the manufacturers testified that under the higher rates complained of they had restricted distribution to a more limited territory, and it is apparently true that such increase in rate affects to some degree competition in the soap trade to the advantage of the smaller manufacturer who ships over short distances and the local producer whose business is limited to supplying the trade in his home town.

During the past few years there have been some slight increases in local rates in the Central Western States and perhaps in other parts of Official Classification territory, and in some instances the local rates have been somewhat reduced. Class rates generally, however, in Official Classification territory are substantially the same as they were in 1887, except as changed by revision of the classification or the giving or withdrawal of commodity rates. Complainant contends that by the abolition of the so-called net-weight practice in 1889 the carriers increased the rates on carload soaps $16\frac{2}{3}$ per cent, such increase remaining in force until our decision in 1891, and that the change from sixth to fifth class rates in 1900 operated to increase the carload rate 20

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per cent. The facts as to the net-weight practice have already been found, and in regard to the change from sixth to fifth class rates in 1900 we find that it did increase carload freights on soap about 20 per cent. These fifth class tariff rates, however, are not generally higher than the tariff rates which were in effect from April, 1887, to June, 1891, and any departures from the tariff rates in effect between April, 1887, and May, 1889, resulting from the net-weight practice, were allowed to or secured by only a portion of the soap manufacturers in Official Classification territory; and such departures during that period were allowed or permitted in disregard of the requirement in the Act to regulate commerce that the established tariff rates should be observed and applied by the carrier upon all articles offered for transportation.

9. Prior to January 1, 1900, soap then being in sixth class, the rates from Cincinnati were 12 cents per 100 pounds to Chicago and 25 cents to St. Paul. After soap was removed to fifth class the rate to Chicago was 15 cents and the rate to St. Paul 31 cents. The rate to St. Paul was thus advanced 6 cents, while to Chicago the increase was only 3 cents. This occurred because shipments from Cincinnati to all points east of the Mississippi River are carried subject to the Official Classification, and the difference between sixth and fifth class rates under that classification to St. Paul was 6 cents, while between Cincinnati and Chicago such difference in class rates was 3 cents. Shipments from Chicago to St. Paul take the Western Classification, and there has been no change in the classification of soap in Western Classification territory. This overlapping of classification territories and different classification of the same article in different territories have been the subject of frequent complaint on the part of shippers in the Central West and Eastern States. Whether in the instance just mentioned any injustice is caused depends upon whether soap is properly placed in the fifth or sixth class of the Official Classification. If sixth is its proper class, the 6 cents increase in the rate to St. Paul was unreasonable and unjust, but if fifth is its proper class the increase in rate to St. Paul or increase of the difference in rates between Cincinnati and Chicago to St. Paul, is merely incidental to a necessary readjustment. It should be further stated in reference to this St. Paul traffic that on February 12, 1900, the rates themselves from Cincinnati and

other points to St. Paul were increased on all classes, and this action resulted in raising soap as a fifth class article from 31 to 33½ cents per 100 pounds. The New York to St. Paul rates were then made 48½ cents, but on January 2, 1901, lower through rates were established between New York and St. Paul whereby the fifth class rate was reduced to 46 cents.

10. Complainant's factories at Ivorydale are located within about 2,000 feet of the Cincinnati, Hamilton & Dayton Railroad, and within about half a mile of the Baltimore & Ohio Southwestern and Cleveland, Cincinnati, Chicago & St. Louis tracks. These are the initial and delivering defendant lines for complainant's traffic from and to Ivorydale. The Erie Railroad Company, which is not a defendant in this case, also reaches Ivorydale by a trackage arrangement over the Cincinnati, Hamilton & Dayton Railroad. The Ivorydale plant is connected with these roads by railway tracks owned by complainant, but operated under the name of the Ivorydale & Millcreek Valley Railway Company, a corporation. This railway, which comprises about 6 miles of track, also connects the different factory buildings, and besides carrying property between the above-mentioned railway lines and the factories is used for conveying fuel, material and products to and from different parts of the plant. Under a contract, dated December 26, 1895, and effective January 1, 1896, the Ivorydale & Millcreek Valley Railway Company receives from the defendants, the Cincinnati, Hamilton & Dayton Railroad Company, Baltimore & Ohio Southwestern Railway Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and from the Erie Railroad Company, 1½ cents per 100 pounds on outbound business to points in Trunk Line territory and 2 cents per 100 pounds on outbound business to points west of Trunk Line territory. On the inbound business the Ivorydale & Millcreek Valley Railway Company receives for carloads of 20,000 pounds or over \$2.50 per car (except on coal, upon which it obtains \$1.00 per car), provided the traffic furnishes the other carriers parties to the contract any revenue outside of certain switching charges which are fixed by the contract as follows: Between Ivorydale and Cincinnati (about 7 miles) \$3.00 per car of 40,000 pounds or less and 1 cent per 100 pounds over 40,000 pounds; between Cincinnati depots and Ivorydale

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\$4.00 per car of 40,000 pounds and 1 cent per 100 pounds over 40,000 pounds. Coal from Cincinnati proper (B. & O. S. W.—Ohio Division, C. C. C. & St. L. and C. H. & D. tracks) is carried at 20 cents per ton, but when coal is loaded at elevators on B. & O. S. W.—Mississippi Division tracks, the switching charge for that service is additional. These established switching charges are divided between the Ivorydale & Millcreek Valley Railway Company and the other railways so that the former receives 50 cents per car and the remainder goes to the connecting railways. The Ivorydale & Millcreek Valley Railway Company agrees to give to the connecting roads all of its outbound business to all territory north of the Ohio and west of the Mississippi River and along the line of the Baltimore & Ohio Railroad, with the exception of the State of Arkansas, that they can handle via their own rails and connections, paying therefor full established rates as published from time to time. The agreement may be terminated upon 10 days' notice by any party. The division between Trunk Line territory and territory west thereof is marked approximately by a line drawn from Toronto, Ont., through Buffalo, N. Y., and Pittsburg, Pa., to Charleston, W. Va. The amounts stated in the contract are allowed to the Ivorydale & Millcreek Valley Railway Company for terminal services, which include the hauls to and from the points of connection with the defendant roads, the loading and unloading of the freight, storage, and in fact everything connected with the inbound and outbound service, except the billing, which is done by employees of the connecting railway companies at Ivorydale in quarters furnished by complainant. For the year ending June 30, 1900, the gross earnings of the Ivorydale & Millcreek Valley Railway Company were \$56,007, operating expenses \$35,313, net earnings \$20,194. The capital stock of the company is \$100,000 or \$16,667 per mile of line. It has no bonded debt. The earnings show very large returns upon the capital invested, and it seems to be conceded that the operation of this terminal railway is highly profitable to complainant. This results, of course, mainly from the above-mentioned advantageous contract with the connecting lines. Under this contract liberal arbitrary rates and charges are secured by the Ivorydale & Millcreek Valley Railway Company when applied to the whole of complainant's shipping business, which

amounted in the aggregate in 1899 to 10,483 cars. The testimony indicates that this contract with complainant's Ivorydale & Millcreek Valley Railway Company was made by the defendant roads at Cincinnati with a view of avoiding rate-cutting by each other. In a brief filed for the Baltimore & Ohio system it is stated that the contract is "a *modus vivendi* for the railroads with reference to the Procter & Gamble business," that "without it or some similar arrangement the railroad companies would be cutting each other's throat for the traffic," that "it is a price paid to the Procter & Gamble Company by the railroads to insure a distribution of the business impartially among the other lines at Ivorydale." The division of this business among the defendant lines is controlled by complainant's traffic manager, Mr. McDonald, who is also general manager of the Ivorydale & Millcreek Valley Railway Company. Although the contract is claimed by defendants to be an extravagant arrangement and one which is practically continuous, because necessary to prevent the competing defendant railways from cutting the rates, it is nevertheless terminable at the option of any party upon 10 days' notice. The defendants reaching Ivorydale by acting in concert could unquestionably secure a reduction of the allowances now made to the Ivorydale & Millcreek Valley Railway Company and re-establish the *modus vivendi* upon a lower basis of cost if they found or believed that the present allowances to that company are unwarranted. Upon the point whether such allowances are in fact too liberal the evidence is insufficient, considering all of the services rendered by complainant or the Ivorydale & Millcreek Valley Railway Company, and we limit our finding in that respect to saying, as stated above, that the income of the Ivorydale & Millcreek Valley Railway Company clearly affords very large returns upon the capital invested.

If this case solely affected the interests of the complainant and defendants it might be necessary to further determine and state the results of this contract, but as the general question involved is the propriety of the classification of soap and rates thereon in Official Classification territory as adopted by the defendants and other

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carriers, and as affecting soap manufacturers and soap traffic generally in that territory, the essential questions of fact are those pertaining to the reasonableness and justice of placing soap in fifth class, instead of sixth, for carloads and in 20 per cent less than third class, instead of fourth class, for less than carloads, and these matters are certainly not controlled by any special advantages accruing to complainant from this contract or in other respects. The defendants have apparently taken the contrary view and given particular attention in their testimony to the profits and generally prosperous condition of the complainant, and it is true that the defendants herein are those largely used by complainant in its business, while many carriers other than these defendants are engaged in the carriage of soap for numerous other manufacturers of that commodity in Official Classification territory. The ultimate question in the case, however, is the legality of the present classification of soap and the resulting rates on that traffic, not only from the standpoint of complainant but that of all other soap producers affected by such classification, and necessarily the great mass of testimony in the case has been considered with reference to the determination of that question.

11. The characteristics of soap as a desirable article of traffic for the carriers were succinctly found and stated by the Commission in its former decision as follows:

"Common soap is packed in convenient form for handling by carriers, and it is heavy, compact and not bulky in proportion to weight, in comparison with other grocery articles; its liability to damage is very slight; the risk is very light in case of wreck of train; a car can easily be filled with soap to its full capacity; it does not deteriorate in transportation; it furnishes a very large volume of traffic as indicated by the amount manufactured; the material for its production is brought together from many parts of the country, and the soap is distributed everywhere, which indicates the length of haul to which it is subject; its distribution by railroads is as general as its use by individuals; as the latter universally participate in its use, the former must as generally engage in its transportation; it is not tainted by offensive odors of other articles or filth of cars, and can therefore be transported in some cars that would be unfit for many grocery articles; it does

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not soil a car or affect other freight." The fifth class contains few, if any, more desirable articles than soap in point of convenience of handling and loading, and in this respect it is fully equal to package freight of any class. Some heavy commodities, such as iron and steel articles, and perhaps some other kinds, may load heavier, and barreled freight may be rolled and is therefore somewhat easier to handle, but considered with reference to freight generally soap ranks well up with the heavier and less bulky articles as traffic adapted to load large weight in small space and therefore produce relatively greater returns to the carrier.

12. The volume of the soap traffic is also very considerable. While no statistics are given showing even approximately the aggregate amount offered for carriage, it does appear that about 1,000,000,000 pounds of soap, equal to 500,000 tons, are annually produced in the United States, and of this tonnage much more than half is apparently produced in Official Classification territory. This estimate is based upon the fact that there are but few large distributing soap factories in Southern Classification territory, which lies south of the Ohio and Potomac Rivers and east of the Mississippi, and soap factories of that description in Western Classification territory are understood to be mostly located on and east of the Missouri River. The numerous smaller and purely local factories must, however, produce a very considerable part of the aggregate yearly output, and of course much of this is delivered to customers from the factory. To that extent the amount of tonnage by rail is reduced. Of the total tonnage produced the complainant manufactures and ships about one-tenth, or 50,000 tons, equal at the carriers' prescribed minimum weight of 30,000 pounds per car to 3,333 $\frac{1}{3}$ cars. The box or package would increase the total weight by about 11 per cent. Complainant's carload freight averages more than such prescribed carload minimum, and runs up to 40,000 and sometimes to over 50,000 pounds, even in some instances exceeding the marked weight capacity of the cars; but as a rule the loading has been considerably under the marked car capacity, and the average seems to be somewhere between 35,000 and 40,000 pounds. On the other hand, 35 per cent of complainant's traffic for a given year was

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in less than carloads, and this involves the use of a greater number of cars than would be the case if the traffic was all in carloads. The volume of the soap traffic is less than that of canned goods and sugar, both of which are in fifth class, and it is small as compared with that of hay and numerous other articles now in the fifth and sixth classes. On the other hand, it is greater than that of many other articles in either the fifth or sixth class. A table prepared in our Division of Statistics gives tonnage figures the totals of which were published in the Statistical Report on Railways in the United States for the year ending June 30, 1900. From this table the railway tonnage of different descriptions of traffic carried in Official Classification territory is taken as follows:

Products of Agriculture:

Articles taking rates below sixth class: Grain 7,359,447 tons. Flour 2,321,884 tons. Other meal products 1,798,926 tons.

Articles taking fifth class rates: Hay 2,485,149 tons.

Articles taking fifth class rates or higher: Fruit and vegetables 3,026,615 tons.

Articles taking fourth class or higher rates: Tobacco 296,843 tons. Cotton (which also moves at lower commodity rates) 127,848 tons.

Articles taking various class rates: Other products of agriculture 650,528 tons.

Products of Animals:

Articles commonly taking fifth class rates: Dressed meats 825,536 tons. Other packing-house products 1,055,276 tons.

Articles taking fifth class or higher rates: Hides and leather (leather usually fourth class or higher) 513,175 tons.

Articles taking special tariff rates: Live stock 2,237,620 tons.

Articles taking various class rates: Other products of animals 970,962 tons.

Products of Mines:

While ores, stone and sand are in the sixth class, they frequently take lower commodity rates as do other products of mines, including coal and coke. Anthracite coal 51,291,160 tons. Bituminous coal 78,396,036 tons. Coke 14,390,827 tons. Ores 5,202,064 tons. Stone, sand, etc., 20,776,791 tons. Other products of mines 1,265,772 tons.

Products of Forest:

These products while nominally in sixth class nearly all often take lower commodity rates. Lumber 15,720,404 tons. Other products of forest 6,922,020 tons.

Manufactures:

Articles usually taking fifth class or higher commodity rates: Petroleum and other oils 2,650,760 tons.

Articles taking fifth class rates: Sugar 1,311,382 tons.

Articles taking fifth and sixth class rates: Naval stores, including rosin in sixth class and turpentine and wood in fifth, 90,195 tons.

Articles usually taking sixth class or lower rates: Iron, pig and bloom 8,651,074 tons. Iron and steel rails 1,839,763 tons. Cement, brick and lime 9,254,383 tons.

Articles usually taking fifth class or higher: Castings and machinery 5,980,335 tons. Bar and sheet metal 6,817,715 tons. Agricultural implements 582,339 tons. Wines, liquors and beers 1,128,350 tons.

Articles taking various class rates: Household goods and furniture 696,662 tons. Wagons, carriages, tools, etc., 450,144 tons. Other manufactures 9,293,604 tons.

Merchandise:

Articles taking various class rates, usually fifth class or higher: 12,146,648 tons.

Miscellaneous Commodities:

Articles taking various class rates: 15,913,896 tons.

It will be observed from the foregoing that the articles carried in greatest volume usually take relatively lower rates, though some commodities moving in comparatively small volume take lower rates because of low value, small trade margins in proportion to value, or on account of other controlling commercial conditions. There are also certain inherent characteristics of different kinds of traffic which apparently indicate their classification in classes lower than are given to other commodities. Thus, cement, brick and lime, in sixth class or lower, apparently should and do take a lower class than manufactured iron articles, and all raw products of the farm, forest and mine should commonly take lower rates than manufactured articles. Illustrations of this character might be carried on down through the whole list as 9 I. C. C. REP.

above divided under general heads. The system of this classification appears to be to group all articles of the same general character in one class, though of course there are some exceptions, such, for instance, as hay, a raw agricultural product, which is now in fifth instead of sixth class. There is plainly nothing in the volume or in the general characteristics of soap to entitle it to be classed lower in carloads than sugar, cheap iron articles, bar and sheet metal, canned goods or other general merchandise usually in the fifth or a higher class. Articles in all of the different classes differ widely in respect of value, and this must necessarily occur in a classification having only six classes or indeed in any small number of classes.

13. Complainant's common soaps sell from $1\frac{3}{4}$ to $3\frac{3}{5}$ cents per pound, and the average selling price of all soap is estimated in the record at about $3\frac{3}{4}$ cents per pound. The wholesale prices in Cincinnati of various other fifth class commodities in carloads were put in evidence as follows: Apples, dried, $11\frac{1}{2}$ to 5 cents per pound; Bicarbonate of Soda, 1 cent per pound; Glucose, $1\frac{7}{10}$ cents per pound; Lard Oil, 40 to 56 cents per gallon; Fish Oil, $3\frac{3}{4}$ cents per pound; Cottonseed Oil, $51\frac{1}{2}$ cents per pound; Linseed Oil, $8\frac{3}{4}$ cents per pound; Rosin, 1 cent per pound; Tallow, 6 cents per pound; Paraffine Wax, 6 to 10 cents per pound; Laundry Starch, $21\frac{1}{4}$ cents per pound; Pearl Starch, for sizing, $13\frac{1}{4}$ cents per pound; Grape Sugar, 2 to 3 cents per pound; Sugar, 3 to $5\frac{8}{10}$ cents per pound; Turpentine, $3\frac{6}{10}$ cents per pound; Clover Seed, $71\frac{1}{2}$ to 9 cents per pound; Timothy Seed, $21\frac{1}{4}$ to 3 cents per pound; Red Top Seed, ordinary, $21\frac{1}{2}$ to 4 cents per pound; Red Top Seed, heavy, 7 to 8 cents per pound; Orchard Grass Seed, 6 to 9 cents per pound; Blue Grass Seed, 6 to 7 cents per pound; Binder Twine, $9\frac{3}{4}$ cents per pound; Cotton Bags, 12 to 15 cents per pound; Burlap Bags, $71\frac{1}{4}$ cents per pound; Coffee, $81\frac{1}{3}$ to 16 cents per pound; Canned Fruits and Vegetables, \$1.50 to \$2.50 per 2 doz. case, weighing 25, 42 and 68 pounds.

Starch takes a commodity rate below fifth class, and that is perhaps true over some lines as to one or more of the other commodities in the list just given. The value or selling price of soap is higher than that of some articles and lower than that of others named in the list.

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14. About 300 items or articles are contained in the sixth class of the Official Classification. These include coarse chemicals, minerals, ores, building and paving brick and stone, tile, lumber and cheap wooden articles, grindstones, ice, rosin, flour, grain and grain products, in carloads. Many of these, particularly grain, flour, and other grain products, and often lumber and low-grade wooden articles, are given lower commodity rates for carloads. Probably 200 or less articles in the sixth class are commonly carried in carloads at the sixth class rates. These articles are not similar to soap in character or use, and they are generally of less value than soap.

The following named grain products, nominally in the sixth class, are given commodity carload rates by the carriers as low as those fixed for grain :

Avena,	Hominy,
Bran,	Hulled Corn,
Brewers' Dried Grain,	Kaffir Corn Meal,
Brewers' Meal,	Maizeline,
Buckwheat Flour,	Maizone,
California Breakfast Food,	Malt,
Cerealine,	Malt Silver Flake,
Corn Flour,	Malt Skimmings,
Corn Meal,	Malt Sprouts,
Cotton Seed Cake,	Middlings,
Cotton Seed Hulls,	Mill Feed,
Cotton Seed Meal,	Oat Hulls,
Cracked Corn,	Oat Meal,
Cracked Wheat,	Oil Cake,
Cream of Maize,	Oil Meal,
Distillers' Dried Slop,	Pearl Barley,
Farina,	Pearl Wheat,
Farinose,	Quick Malt,
Flake Malt,	Rolled Oats,
Flour,	Rolled Wheat,
Frumentum,	Rye Flour,
Germos,	Screenings,
Glucose Feed,	Ship Stuff,
Gluten Meal,	Shorts,
Grits,	Sprouted Barley,
Groats,	Starch
Ground Corn,	Vitos
Healthall,	

Starch, which is in the fifth class, usually takes, as above stated, lower carload rates than those fixed for that class, and generally the grain rate. These are all given lower commodity rates because they are made from grain, starch chiefly from corn and

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most of the other products from wheat and corn. The milling industry is carried on not only in the West near to the great grain fields, but also largely in the East, and it is claimed by defendants that low rates are necessary upon all of these products as well as upon flour and other staple cereal foods. Rice, which is also usually given the grain rate, is a foreign as well as domestic product, and may be imported into this country through any gateway. It competes for sale with the various cereal foods. Soap is fully as desirable to the roads as an article of traffic as starch and many of the higher grades of cereal foods, and probably also as compared with rice, but not so much so as flour. The total volume or tonnage of flour is much greater than that of soap, and the same is true of other staple mill products as a whole. While the necessity for rates as low as those on grain for the finer grades of cereal products and for starch and rice may be open to question, it has been the long-standing practice of the carriers to accord commodity rates to such articles.

15. The following named commodities were changed by the carriers on January 1, 1900, from sixth to fifth class:

Articles.	Minimum weight.
Actinolite Ore, ground, in bags.....	30,000
Barrels, Casks and Tierces, N. O. S., new or old.....	16,000
Basket Material, N. O. S.....	24,000
Blue Vitriol.....	30,000
Brewers' Chips or Shavings.....	24,000
Carriers, ale, beer, beer tonic, or porter.....	20,000
Cement, asbestos, boiler-covering, and magnesia.....	30,000
Cloth Boards, wooden.....	24,000
Cocanut Husks.....	24,000
Cocanut Skin Shavings or Refuse.....	24,000
Coffee, in single or double bags.....	30,000
Coffee, ground or roasted.....	24,000
Copperas.....	30,000
Corn Cobs and Husks.....	20,000
Corrosive Pots.....	30,000
Cotton-Seed Hulls or Motes.....	30,000
Creosote, in wood.....	30,000
Fish, smoked, pickled or salted.....	30,000
Flour, potato, in sacks or barrels.....	30,000
Glauber Salts, in barrels.....	30,000
Hay, pressed in bales.....	20,000
Jute Butts.....	30,000
Mortar Stains or Colors.....	30,000
Moss, nursery and peat.....	24,000
Oil, creosote in wood.....	30,000

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Articles.	Minimum weight.
Oil, creosote and pine, in tank cars.....	Capacity of car.
Oxide of iron, in kegs barrels or casks.....	30,000
Paints, earth, iron metallic.....	30,000
Peas, dried, coarse, in bulk.....	30,000
Pea Hulls.....	24,000
Peat or Peat Moss.....	24,000
Pitch, N. O. S.....	30,000
Scrap Rubber.....	30,000
Sea Grass, pressed in bales.....	20,000
Soap, Soft Soap, Soap Extracts, Powders, Tablets, Soapstone.....	30,000
Starch, in sacks, boxes, or barrels,—ground in barrels.....	30,000
Straw, N. O. S., pressed in bales.....	20,000
Sugar, N. O. S., in boxes, bags, barrels, or half barrels.....	30,000
Sulphate of Iron.....	30,000
Shavings, wood, in bales.....	20,000
Shavings, wood, in bulk.....	20,000
Tar, Coal, and Coke, in barrels.....	30,000
Tar, Coal, and Coke, in tank cars.....	Capacity of car.
Tobacco Stems and Fertilizer.....	24,000
Turpentine, in tank cars.....	Capacity of car.
Vinegar Chips or Shavings.....	24,000
Washing Powder, dry, in packages.....	30,000

This list contains coffee, sugar and smoked or salted fish as formerly in the sixth class and which were compared with soap in our decision of the former Procter & Gamble cases. The present sixth class embraces no prominent general merchandise article except grain and the cereal products above mentioned, coarse dried peas which were restored to sixth class in 1900, cheap lumber products, lime, rosin, salt, sal-soda and other coarse chemicals, cottonseed, flaxseed, and wagon material, such as felloes, hub blocks, shafts and spokes. Besides dried peas above mentioned the following articles were afterwards restored to the sixth class in the Official Classification: Carriers, ale, beer, beer tonic, and porter; shavings, wood, in bales or bulk; tobacco fertilizers, compressed in bales or sacks; and tobacco stems, in bales.

16. The fifth class of the Official Classification contains over 2,000 articles, and includes soap and many other grocery articles, such as canned fruits and vegetables, candles, cabbage, pickles, potatoes, pumpkins, parsnips, squash and turnips, chicory, citron, lemon and orange peel, desiccated cocoanut, coffee, fruit butters, jelly, sauce, soap and washing powders, macaroni, vermicelli, flour paste, mustard, olives, pickle or brine, soups and 9 I. C. C. REP.

broths, sugar, syrup and tapioca. Numerous other articles sold by grocers or in general stores are also in the fifth or higher classes.

Although soap is most desirable traffic for the carriers, it is not a species of traffic which like hay or grain moves in very large aggregate quantities, nor is it so low in value as to call for the lowest class rating on that account. It is a widely manufactured article sold with other general merchandise, and, unlike the principal food staples which move in greatest volume from the West to the East, it is shipped from the factory in all directions and meets the products of other factories in all markets. The soaps of New York and Chicago manufacturers sell in Cincinnati in competition with complainant's products, and the latter in turn are sold in Chicago as well as New York and other extreme eastern cities and towns. This condition is more or less common to other general merchandise articles which are produced in various parts of Official Classification territory. Without some showing of discrimination against soap in its classification as compared with other articles of the same general character, or any special distinction appearing in favor of soap in either volume, value or controlling commercial considerations, we are unable to find simply because it is a desirable article of traffic for the railroads in the matter of earnings and ease of handling that it is unjust to retain it in class 5 with other articles of like character, some of which are equally as attractive as soap from the standpoint of car revenue. Moreover, the fact that one article loads heavier than another does not determine the question of greater aggregate or net revenue, which requires that tonnage shall also be taken into account. Complainant's annual soap traffic of, say, 50,000 tons, is unquestionably particularly desirable because of its concentration at a single point of shipment, but the entire soap tonnage in Official Classification territory is not exceptionally large as compared with that shown for numerous other descriptions of traffic.

17. In Official Classification territory class rates generally are, as before found, practically the same to-day as they were in 1887, the changes made having been by changes in the classification or by making, changing or canceling commodity rates. During that period the tendency of rates on classified articles has been to advance through changes in the classification and to reduce

on articles in the commodity list. This is not intended to mean that no classified articles have been reduced; there have been frequent reductions as well as advances in both the classification and in commodity rates, but the net results appear to be as stated. Besides the increased rating of soap, the classification of January 1, 1900, also advanced a large number of other articles in both carloads and less than carloads, and there were at the same time numerous cancellations of commodity rates. Some commodity rates were afterwards restored or reduced, but to what extent is not shown. It does appear, however, that about 818 articles were advanced to higher classes on that date, that on March 10, 1900, certain articles were somewhat reduced from the basis fixed on January 1, and that these net advances were made and have since been enforced by the carriers for the purpose of securing greater revenue. Several tables were put in evidence by defendants and much testimony was given on their behalf to show greatly increased cost in railway construction and maintenance and also in the price of railway labor. About the year 1899 the cost of railroad material had increased considerably over the prices which prevailed in the years 1893 to 1897. Steel rails had become much more expensive and the cost of cars and locomotives had materially advanced. Since the early part of 1900 the cost of rails and some other articles used in railway construction and equipment has both increased and again decreased to some extent. The wages paid to railway labor have also been materially advanced since the panic years in the last decade, and the number of employees is much greater than it was in that period.

These advanced prices for railroad material and greater cost of railway operation were largely if not fully offset by the increase in traffic which set in strongly during the year 1899, and which has continued in practically undiminished if not greater volume. During most of the time since about the middle of that year the traffic coming to carriers generally in Official Classification territory has been so great as to require the use of all their equipment, and at different periods these carriers have been unable to promptly move the freight offered for transportation. Whatever need for greater revenue may have appeared to the carriers in that territory to exist before the advance in classification and rates in January, 1900, in order to secure the net earnings or

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profits which they, taking them together, obtained prior to June 30, 1893, has been mainly removed by the augmented revenue from increased volume of business; for, if the roads in Official Classification territory had made no advance in classification in January, 1900, their aggregate earnings would, we think it safe to say, have equaled if not exceeded in 1900 or 1901 those they received in the most prosperous previous year. This plainly appears from reports of mileage and earnings in the aggregate and per mile of line of railways in Official Classification territory. The average net earnings per mile of line in this territory, Groups I, II and III, for the years ending June 30, 1890 to 1898, inclusive, was \$3,539; for the year ending on the same date in 1899 it was \$3,643; for the fiscal year ending June 30, 1900, it was \$4,217; and for 1901, \$4,343. The fiscal year of greatest aggregate net earnings in Official Classification territory prior to 1899 was 1893, when such earnings amounted in Groups I, II and III to \$185,691,581. In 1899 they were \$192,784,813; in 1900 they were \$225,694,310; and in 1901 \$233,557,308. These greatly increased net earnings have not wholly resulted from increased business. Economies in operation from the use of larger and heavier equipment, both cars and engines, and improved roadbeds, amounting almost to reconstruction in some instances, have been and are still being effected, and these are permanent improvements which will continue to promote the net earnings of the carriers.

It is not deemed necessary for the purposes of this case to make detailed findings in regard to the financial condition of the several defendant lines. The classification change complained of was adopted and has since been enforced by practically all railroad carriers in Official Classification territory, for the declared purpose of benefiting all such carriers through resulting increase of revenue; and, as above stated, the main question here presented is whether the higher classification of soap is just and reasonable as applied not only to complainant's business but to that of all other soap manufacturers and shippers in the section in which this classification is enforced. It seems sufficient to say on this point that, compared with roads generally throughout the United States, the defendants are in fair to excellent financial condition, and most of them extremely prosperous.

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18. Tested by recognized principles of freight classification, we are unable to find that soap in carloads is in fact unjustly or unreasonably placed in class 5 of the classification as in effect since January 1, 1900; but the question perhaps remains whether, independently of classification, the advanced rates resulting from the change of classification are unreasonable. If soap only had been advanced from sixth to fifth class, or even if the articles with which soap was compared in our former decision had been retained in the sixth class, there would be a more satisfactory basis of comparison and inference. As it is, no proper comparison can be made which sustains complainant's contention, nor is there such a showing of diminished profits to soap manufacturers on account of the freight rate, or because of the increased price of raw materials used in soap manufacture, in view of the decided advance made by such manufacturers in the price of soap about January 1, 1900, as to indicate a commercial condition requiring rate reductions on carload shipments. There is no evidence of any increase in price to consumers, and beyond the 15 to 25-cent advance in the price per box to jobbers, which the soap manufacturers say was made on account of higher raw material, there is no showing of increased price to them. The profits of the manufacturers have not been gone into in minute detail, but enough appears to satisfy us that the increased rate on carloads has not unduly injured them, considering such increase by itself or as connected with the higher cost of manufacture. The soap manufacturers have established the fact of considerable advance in the price of raw material, and the carriers have also established the fact of large advances in the prices of their supplies and of increased cost of operation. We have found that the carriers, taking them as a whole in this classification territory, made these advances in freight rates in a time of unusual prosperity, and that they would probably have secured net earnings without such advances equal to those obtained in any previous year; but we have also found that soap is properly in fifth class while various other merchandise articles now in that class are charged fifth class rates, and we cannot assume that such other fifth class articles of merchandise, or that all of those articles which were advanced from sixth to fifth class on January 1, 1900, are now carried by these roads at unreasonable rates. The advances made by the

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On the other hand, the evidence is primarily circumstantial, raising the question whether the inference is reasonable. But there is a finding of fact supporting a reasonable basis for inference that some persons did not have knowledge of the homicide.

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19. The less than carload classification and rates on soap received separate treatment. Soap in less than carloads was fourth class in the first Official Classification and had relatively the same rates in the years prior to 1887, the year when the first Official Classification was issued. At the same time carload soap was in the fifth class of the classification, and it had about the same relative rates prior to 1887. The fourth class for less than carloads and fifth class for carloads continued up to June, 1891, when in *the case of* *Procter & Gamble* soap was reduced to sixth class for carloads. Those proceedings did not affect the less than carload classification, and soap in less than

carloads remained in fourth class up to January 1, 1900. Less than carload lots of soap were therefore always voluntarily placed in the fourth class by the carriers until the date last mentioned, as well when carload soap was fifth class as when it was sixth class freight. On January 1, 1900, the less than carload rating was raised to third class, and on March 10 reduced to 20 per cent less than third class, but not to be lower than fourth class. The difference between sixth and fourth class based on Chicago-New York rates is 10 cents. The difference between fifth and fourth class on the same rate basis is 5 cents. Such difference of 10 cents is 40 per cent of the sixth class rate, and the difference of 5 cents is $16\frac{2}{3}$ per cent of the fifth class rate. The difference between the fifth and third class rate is 20 cents on the Chicago-New York basis, and such difference is $66\frac{2}{3}$ per cent of the fifth class or carload rate. Twenty per cent less than third class for less than carloads reduces the Chicago-New York rate to 40 cents and makes the difference between that rate and the fifth class rate 10 cents or $33\frac{1}{3}$ per cent of the fifth class carload rate.

A large number of articles in Official Classification territory are fourth class in less than carloads and fifth class in carloads. These include chemicals, numerous iron and steel articles, syrup, tin plate, tar, some lead articles, cattle guards, paints, horseshoes, hides, beans and peas, dried in bags, and various other articles. Coarse dried peas have also a sixth class carload rating as before found. Again, using Chicago-New York rates for illustration, the same difference—5 cents—exists between the fifth and sixth classes, and the less than carload rating for all cereal products, which are nominally in sixth class, carloads, is fifth class. The present less than carload rating of 20 per cent less than third class is, however, applied to numerous articles which take fifth class in carloads, among them coffee, sugar, fish, smoked or canned, and canned fruits and vegetables. As before stated, carload and less than carload quantities of soap in the Western Classification are in the fifth and fourth classes, respectively, and under the Southern Classification soap is in the sixth class for any quantity.

Besides involving the payment of higher rates for less than carload shipments, the change to 20 per cent less than third class but not less than fourth class has brought about rate relations differ-

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ent from those previously existing between complainant and other shippers of soap in Official Classification territory. Using Cincinnati and New York City for illustration, the following results are produced: A shipper located at New York City can ship therefrom to practically all points in New England and a large number in New York State without paying higher than fourth class rates. On the other hand, a shipper located at Cincinnati cannot ship northerly or northwesterly therefrom more than about 60 miles without paying an advance over fourth class rates. Some idea of the extent of the advances over fourth class rates on shipments from Cincinnati and New York City, respectively, is afforded by the rate and distance tables given below:

From Cincinnati To	Distance in Miles.	Rates Dec. 31, 1899.	Rates Mar. 10, 1900.	Increases.
Guilford, Ind.	28	10½	12	1½
Dayton, O.	59	10	10	0
Harshmans, O.	60	10	10½	½
Johnsons, O.	67	11½	14	2½
Tippecanoe, O.	75	11½	14	2½
Indianapolis, Ind.	111	15½	15½	0
Portsmouth, O.	106	12	12	0
Columbus, O.	116	12½	15½	3
Lima, O.	132	13	16	3
Ottawa, O.	151	14	17½	3½
Detroit, Mich.	163	16½	19½	3
Terre Haute, Ind.	183	14½	18	3½
Vincennes, Ind.	192	15	18½	3½
Lyons, Ind.	193	10½	12	1½
Paris, Ill.	205	15	18½	3½
Bridgeport, Ill.	205	16	18½	2½
Xenia, Ill.	253	17	20	3
Wheeling, W. Va.	258	17	20	3
Cleveland, O.	263	16	18½	2½
Pana, Ill.	278	17	20	3
Chicago, Ill.	294	17	20	3
Pittsburg, Pa.	313	18	21	3
Peoria, Ill.	323	17	20	3
E. St. Louis, Ill.	339	17	20	3

From New York City To	Distance in Miles.	Rates Dec. 31, 1899.	Rates Mar. 10, 1900.	Increases.
<i>Erie R. R.</i>				
Otisville, N. Y.	76	14	15	1
Port Jervis, N. Y.	88	14	15	1
Lackawaxen, Pa.	111	15	16	1
Cohocton, N. Y.	131	15	16	1
Lordville, N. Y.	153	17	18	1
Deposit, N. Y.	177	17	18	1

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From New York City To	Distance in Miles.	Rates Dec. 31, 1899.	Rates Mar. 10, 1900.	Increases.
<i>D. L. & W. R. R.</i>				
Boonton, N. J.	30	10	10	0
Bridgeville, N. J.	75	14	15	1
Stroudsburg, Pa.	92	15	16	1
Gouldsboro, Pa.	123	17	18	1
Scranton, Pa.	145	17	18	1
Foster, Pa.	172	17	18	1
<i>C. R. R. of N. J.</i>				
Elizabeth, N. J.	13	7	7	0
Bound Brook, N. J.	31	9	10	1
Red Bank, N. J.	39	10	10	0
High Bridge, N. J.	53	12	13	1
Easton, Pa.	74	14	14	0
Bridgeton, N. J.	134	18	18	0
Bayside, N. J.	144	18	18	0
<i>N. Y. C. & H. R. R.</i>				
Tarrytown, N. Y.	25	9	9	0
Garrison, N. Y.	50	10	10	0
Poughkeepsie, N. Y.	74	11	11	0
Tivoli, N. Y.	99	12	12	0
Stuyvesant, N. Y.	124	13	13	0
Albany, N. Y.	143	13	13	0
<i>N. Y. O. & W. R. R.</i>				
Mechanicstown, N. Y.	75	13	14	1
Ellensville, N. Y.	101	14	16	2
Parksville, N. Y.	124	17	18	1
East Branch, N. Y.	150	17	18	1
Walton, N. Y.	179	18	20	2
Sidney, N. Y.	201	18	20	2
<i>L. V. R. R.</i>				
Elizabeth, N. J.	13	6	6	0
Bound Brook, N. J.	33	9	10	1
Flemington Jc., N. J.	51	12	12	0
Bethlehem, Pa.	89	14	14	0
Allentown, Pa.	93	14½	14½	0
Slatington, Pa.	110	14½	16	1½
Mauch Chunk, Pa.	122	16	17	1
White Haven, Pa.	146	17	18	1
Wilkes Barre, Pa.	176	17	18	1
<i>P. R. R.</i>				
Elizabeth, N. J.	14	8	8	0
Philadelphia, Pa.	92	12	12	0
Wilmington, Del.	117	18	18	0
Newark Center, Del.	130	17	18	1
Perryville, Md.	150	19	20	1
Baltimore, Md.	187	18	18	0
Washington, D. C.	228	21	22	1
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From New York City To	Distance in Miles.	Rates Dec. 31, 1899.	Rates Mar. 10, 1900.	Increases.
<i>N. Y. N. H. & H. R. R.</i>				
Port Chester, N. Y.	29	7	7	0
Fairfield, Conn.	54	8	8	0
New Haven, Conn.	76	10	10	0
Springfield, Mass.	138	12	12	0
Worcester, Mass.	198	18	18	0
Boston, Mass.	215	16	16	0
Lowell, Mass.	243	22	22	0
<i>B. & M. R. R.</i>				
Greenfield, Mass.	171	15	15	0
North Adams, Mass.	209	15	15	0
Boston, Mass.	233	16	16	0
Nashua, N. H.	272	20	20	0
Portsmouth, N. H.	290	23	23	0
Rochester, N. H.	313	23	23	0
Portland, Me.	348	23	23	0

The fourth class rate from Cincinnati to Boston is 34½ cents, and a 20 per cent less than third class rate between the same points is 38½ cents, indicating an increase of 4 cents in the less than carload rate from Cincinnati to Boston. The rate from New York to Boston is 19 cents, fourth class, and 20 per cent less than third class, but not below fourth class, also gives a rate of 19 cents, showing no advance over fourth class from New York to Boston. These differences are due to variations in the scales of rates prevailing in the different sections. The 20 per cent less than third class rating for less than carloads applies to all shippers of less than carload lots of soap throughout the entire territory, but it increases some rates more than others and leaves some as they were before it was adopted. When, for example, under the application of that rule the rate from Cincinnati to Boston is increased 4 cents and the rate from New York to Boston remains the same, as compared with the fourth class rates formerly in effect, it is plain that this method of determining rates upon a percentage basis operates unequally upon the different shippers of less than carload quantities in that territory.

Official Classification No. 20 contained an elaborate rule providing for mixed carloads, and a similar but amended rule appears in the present classification, which is No. 23. This is called "Rule 10" in the classification, and as given in No. 20 is substantially as follows:

Rule 10 (A): When a number of different articles, except
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those covered by sections B (Provisions) and C (Dressed Beef) of this Rule, of the same class are shipped at one time, by one shipper, to one consignee and destination, in carloads, they shall be taken at the rate per 100 lbs. for such class, in carloads, and at the highest minimum carload weight provided for either of the articles, actual weight to be charged for if greater than the minimum weight. If the articles (provided with L. C. L. and C. L. rating) are of more than one class, the carload rate and minimum carload weight for the articles in the highest class shall be charged on all the articles that make up the carload, actual weight to be charged for when in excess of the specified minimum weight, excepting as provided in sections B, C and D of this Rule and Rule 7 (A); and also excepting that where the actual weight of the articles in any one class equals or exceeds the minimum carload weight provided therefor, such articles may be charged for at the minimum carload weight (actual weight if in excess of the minimum weight) and carload rate provided for same, and the other articles will be charged for at the L. C. L. class rate to which they belong.

(B): When articles (except Dressed Beef and articles taking same rate as Dressed Beef—see section C of this Rule) of a higher or lower class are loaded in a car containing not less than 15,000 lbs. of meat (except as provided for in Rule 10 (D) or other packing house products taking fifth-class rate, in carloads, from one consignor to one consignee and destination, and the aggregate weight of the entire shipment is 30,000 lbs. or more, the carload rate per 100 lbs. applying on each article shall be charged. If such articles have no carload rating then actual weight and class rate should apply on such articles. If the aggregate weight of the different articles does not equal the required minimum, sufficient weight shall be added to the fifth class articles to make up the deficiency; provided that in no case shall the minimum charge for the entire shipment be less than for 30,000 lbs. at the fifth-class rate.

(C) (This portion of the Rule refers to mixed shipments of dressed beef, sheep or hogs, and is not important in this connection.)

(D): Where shipments of Bulk Meats and Meats in packages, and other packing house products taking fifth-class rate in car-

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loads, from one consignor to one consignee and destination, are loaded in the same car, and the aggregate weight of the shipment is 30,000 lbs. or more, the C. L. rate per 100 lbs. applying upon each article shall be charged.

Supplement No. 12 to Official Classification No. 22 contains the following changes in Rule 10:

Sub-division A of the Rule remains unchanged.

Sub-division B-1 is changed to read as follows:

When any of the following specified articles are shipped by one shipper or owner at one time to one consignee and destination in either straight or mixed carloads, and the aggregate weight of the entire shipment is 28,000 lbs. or more, the carload rate per 100 lbs. applying on each article shall be charged:

Beef, pickled, in bbls. or tierces;

Casings, Sausage, Beef, in bbls., one-quarter bbls., one-eighth bbls., one-eighth bbls. crated or boxed; kegs, tubs or pails crated or boxed;

Casings, Sausage, Hog, in bbls., one-quarter bbls., one-eighth bbls., one-eighth bbls. crated or boxed; kegs, tubs or pails crated or boxed;

Grease, N. O. S., in bbls. or boxes;

Guts (Beef or Hog), in bbls., half-bbls., tierces or casks;

Lard (except Leaf Lard);

Lard Substitute, N. O. S.;

Liver, pickled, in bbls., tierces, or casks;

Meats, N. O. S., boxed;

Meats, desiccated, in cans, boxed;

Meats, dried, N. O. S., in boxes, bbls. or casks;

Meats, dried, sliced, in paper boxes, packed in cases;

Meats, potted, in cans, boxed;

Meats, potted, in glass or earthenware, boxed;

Meats, salted, boxed;

Meats, smoked (except Tongue), in bbls., boxes or casks;

Oil, Oleo, in bbls. or tierces;

Oil, Tallow, in bbls. or tierces;

Oil, Red, in bbls. or tierces;

Oil, Lard, in bbls. or tierces;

Oil, Tanners', in bbls. or tierces;

Pigs' Feet, pickled;

Pigs' Feet, packed;
Pork, pickled, in bbls. or tierces;
Sausage, bologna or smoked, in bbls., boxes, kegs, casks or baskets;
Sausage, canned;
Stearine, in bbls., tierces or bags;
Tails, Cattle or Ox, edible, salted or dried, in boxes, bbls. or casks;
Tallow, in bbls. or tierces;
Tongues, pickled, in bbls. or tierces;
Tripe, pickled, in bbls., kegs or kilts.
Sub-division B-2 reads as follows:

When any of the following specified articles are shipped with other articles taking 5th class, in carloads, by one shipper or owner, at one time, to one consignee and destination, and the aggregate weight of the entire shipment is 28,000 pounds or more, the carload rate for one hundred pounds applying on each article shall be charged.

(Here follows a restatement of the articles mentioned above under Sub-division B-1.)

The Rule then goes on as follows:

If the aggregate weight of the foregoing articles, including those taking 5th class in carloads, does not equal the required minimum of 28,000 pounds, sufficient weight at 5th class rate shall be added to the weights thereof to make up the deficiency in weight. Any other articles loaded in the same car with those described above, including those taking 5th class in carloads, will be charged for at the less than carload rate authorized for such articles, and the weight thereof shall not be applied towards making up the required minimum weight of 28,000 pounds.

(Sub-division C is omitted.)

Sub-division D reads as follows:

Where shipments of bulk meats and meats in packages, and the articles specified in section B of this rule taking 5th-class rates in carloads are shipped by one packer or owner at one time to one consignee and destination, and are loaded in the same car, and the aggregate weight of the shipment is 28,000 lbs. or more, the carload rate per 100 lbs. applying upon each article shall be charged. If the actual weight of the bulk meats and meats in 9 I. C. C. REP.

packages and the articles specified in section B taking 5th-class rate in carloads, does not reach the prescribed minimum weight, sufficient weight shall be added to the actual weight of the bulk meats to make up the prescribed minimum weight of 28,000 lbs.

It is complained that under Rule 10-A and its various subdivisions wholesale grocers and meat packers are able, with soap in class 5, to ship less than carload quantities of soap with other articles of that class in aggregate quantities sufficient to make a full carload and thereby obtain the carload rate upon a less than carload lot of soap. Wholesale grocers can ship mixed carloads of fifth class articles, including soap, under Rule 10 (A), but it is not apparent how complainant is injured by the operation of the rule in that respect. Complainant is a manufacturer of soap and aims to supply the wholesale grocer or jobber with that commodity instead of competing with the jobber for the retail trade. The testimony is to the effect that complainant does not sell direct to retailers. There may, however, be some competition between complainant and large wholesalers in supplying smaller jobbers at various points, but it is difficult to perceive how that portion of the rule operates materially to the detriment of the soap manufacturer.

A different situation exists in the case of meat packers, who are permitted under Sub-division B-2 of Rule 10 to ship a mixed carload of provisions and other articles taking fifth class rates, which of course includes soap. The manufacture of soap by meat packers from grease and tallow obtained from the slaughter of animals has come to be a branch of their business, and, as above shown, numerous products of the packing house take fifth class rates. The meat packer who also manufactures soap is therefore in competition with the complainant and others who are mainly engaged in the production of this article. The complainant may also take advantage of Rule 10 governing mixed carloads in the shipment of its products, a number of which, besides soap, also take fifth class rates; but the character of the business is such that it can take advantage of the rule only to a limited extent. On the other hand, the meat packer, who is constantly sending out quantities of provisions, may avail himself of the privilege to a very considerable degree. The packing houses do business largely through agencies or representatives at numerous

points in Official Classification territory, and this tends to increase the value of the mixed carload rule to that class of shippers. While this privilege to the meat packers may have a tendency to keep down the price of soap to dealers, it discriminates strongly against the manufacturer who is mainly engaged in manufacturing and selling soap.

A reduction to the old fourth class rating for less than carloads would reduce materially, and often as much as one-half, this discrimination in favor of the meat packers who are competitors with complainant and others in the manufacture of soap, and such reduction to fourth class rates for less than carloads would, with the present fifth class rating for carloads, be simply a return by defendants to the relation of rates as between carloads and less than carloads which they voluntarily maintained for a period of years prior to June, 1891. Whatever the effect of a percentage less than third class for less than carload shipments of other commodities taking that rating under the classification may be, it plainly works discrimination against complainant and other western shippers of soap in less than carload lots in favor of their competitors in the East, when the present situation is compared with that which existed under the old fourth class rating, and it increases to the extent it exceeds fourth class rates the advantage accruing to the packing houses from this mixed carload rule. The difference of 15 cents between fifth class and third class which was in effect as between carload and less than carload shipments from January 1 to March 10, 1900, would plainly be excessive, and the present difference which varies according to a given per cent as applied to different scales of rates appears to be inequitable and unjust, and the fact is so found.

CONCLUSIONS.

The issues in this case involve only questions of fact, and the conclusions to be announced are therefore indicated in the foregoing findings; but as this is the second decision we have been called upon to render in the matter of the classification of common soap in carloads in Official Classification territory, and as the facts shown in the present record appear to call for a different ruling from that made in the former cases, some further statement of

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views upon the more important features of this case than a simple announcement of our determination seems to be required.

It fully appears from the evidence now before us that the *Procter & Gamble* cases which were decided in favor of complainants in 1890 did not present all of the facts in relation to the net-weight practice, and that some considerations then bearing upon the classification of common soap in carloads have become of less importance. Freight classification is based upon the relations which commodities bear to each other in such respects as character, use, bulk, weight, value, tonnage or volume, risk, cost of carriage, ease of handling and controlling conditions caused by competition. The sixth class articles with which soap was compared in the former decision are now in fifth class, except, flour, grain and salt. Starch, though nominally in fifth class, takes commodity rates for the same general reason that grain products take commodity rates, namely, because they are all manufactured from grain. While it may be that starch is actually rated too low by the carriers and that the same is true of the finer grades of grain products, it does not necessarily follow that soap in fifth class is rated too high when such traffic as canned goods, coffee, sugar, cheap iron articles and many other common grocery or merchandise articles are also in fifth class. Soap differs so materially from flour, grain or salt that it can hardly be said to have any significant analogy with either of them in a traffic or commercial sense. No comparison therefore of much value can now be made as between soap and the sixth class articles used for that purpose in the decision of 1890 for such articles have either been advanced to fifth class or are noticeably dissimilar from soap in essential characteristics.

The practice of shipping carload soap at net weights, that is, by paying freight charges only on the weight of the soap and not upon the box in which it is packed, appears to have been a main, if not the chief, ground for the former ruling, and in the cases then decided there seems to have been little evidence to refute the contention of complainants that such practice had generally prevailed (*Procter & Gamble v. C. H. & D. R. Co. et al.*, 4 I. C. C. Rep. 97, 3 Inters. Com. Rep. 131). The decision states that, although common soap had always been in fifth class for ten years or more prior to 1889 the charge had been for net weight only,

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and the revenue on that basis was substantially the same as it would have been if soap had been charged sixth class rates at gross weight. It was also said in the former decision that the parties in their presentation of the case had confined themselves mainly to the question whether the rate under the new practice of charging for the gross weight was unreasonable or unjust in itself, or as compared with other grocery articles in the fifth and sixth classes. Further on in the opinion we find the following: "It does not appear that there was any complaint of the classification of common soap in the fifth class while the charge was for net weight, or until after the defendants began to charge for the gross weight." And again, "The long existence of the former practice whereby a less revenue was received than is now realized tends to show it was satisfactory to the carriers, and nothing appeared to the contrary except the change to the gross-weight system." The final conclusion of the Commission was stated as follows: "Our best judgment is, upon the showing now made, that the charge on the defendant lines for the transportation of common soap should be limited to what it was before they charged for the gross instead of the net weight. We come to this conclusion with increased confidence from the fact that the classification committee put common soap into the fifth class when the practice was to charge for only net weight and that the ruling here made will not reduce the revenue from what that committee practically provided by their classification. The present charge, therefore, growing out of the substitution of charging for gross weight in place of net weight did not receive by the act of classification, and so far as appears has never received, the approval of the committee. The result is that an order issue directing the defendants in each case to cease and desist from charging the complainants more for the transportation of common or laundry soap and the package containing it than they formerly charged under the net-weight practice." The order of the Commission, however, as it was issued, was not confined to complainants' traffic, and the defendants were required generally to cease and desist from charging more than sixth class rates on common soap in carloads.

That controlling importance was given by the Commission to the effect of the change from the net-weight to the gross-weight practice is manifest from the foregoing extracts taken from the 9 I. C. C. REP.

opinion rendered in 1890, and this view is fully confirmed by careful reading of the whole decision. The Commission also said in those cases that it did not appear from the evidence that other manufacturers of common soap were dissatisfied with the present rate (fifth class), and that the question involved was mainly limited in its bearing to the parties to the complaint. An attempt was made by some of the defendants in the former proceedings to secure a rehearing, but this application was made on affidavits which were regarded as defective and insufficient. (*Procter & Gamble v. C. H. & D. R. R. Co.*, 4 I. C. C. Rep. 443, 3 Inters. Com. Rep. 374.) The action of the carriers in again placing car-load soap in fifth class on January 1, 1900, and the bringing of this proceeding by complainant as successor to the complainants in the former cases, operated in effect to reopen the whole question, and the evidence now presented shows, as before stated, a materially different state of facts. The net-weight practice, though admitted to exist as to shipments made by Procter & Gamble and other soap shippers in Cincinnati and that section, did not prevail generally throughout Official Classification territory, nor was it, between April 5, 1887, when the Act to regulate commerce took effect, and May, 1889, when the shipping at net weights was discontinued at Cincinnati and elsewhere, a regulation shown upon the tariffs of carriers in Official Classification territory. Some such custom was undoubtedly permitted at Cincinnati and in that section, but there is nothing to indicate that the net-weight practice was authorized in the manner required by the Act, in any part of the territory in question. Although shipping at net weights operated to change the established rates, it was not provided for by publication in the classification or in the tariffs of the various carriers using that classification. Without such specific authority, it was, when allowed by carriers or practiced by shippers, in effect a rebate from tariff rates amounting to nearly the difference between fifth and sixth class charges. As we read the testimony and as the findings indicate, the Central West manufacturers very largely indulged in the practice prior to May, 1889, while manufacturers in the East generally shipped during that period at gross weights. While as between Procter & Gamble and the defendant carriers in the former cases the ruling made was not unjust, the decision went further, and, upon the

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then apparent or assumed general prevalence of the net-weight practice, required the defendants to change their rates from fifth to sixth class on soap in carloads, not only for Procter & Gamble but for all other soap shippers over their lines; and the natural effect of compliance by these important roads was to compel a general change to the lower sixth class rates throughout the whole territory.

Although the fact that most shippers of a given article in part of a described territory were permitted to secure reduced rates by billing at net weight, while many other shippers of the same article in another portion of that territory paid higher rates through billing at the full weight of the package and its contents, is ample warrant for an order requiring the carriers to remove the unjust discrimination as between such shippers by discontinuing the practice of shipping at net weights in any part of the territory, yet on the other hand, unless the net-weight practice was prevalent throughout substantially the whole territory affected, and either authorized by carriers generally in that territory or so well known from constant and general application as to receive implied sanction, it would not of itself constitute sufficient ground for an order requiring a reduction in rates when all the carriers applied their established charges on the basis of gross weights. We think this is the proper view to take of the net-weight practice, and that it is the one which would have been taken by the Commission in 1890 if all the facts concerning the practice had been brought out in the cases then decided. In the light of the testimony now before us the former decision, based as it appears to have been mainly upon the net-weight practice, should not control the determination of this case.

A further difference in the conditions connected with shipping at net and gross weights also appears in the record. The weight of the boxes used for shipping soap has been considerably reduced, and the difference between gross and net weights is now less than it was in 1890, when the former cases were decided. The boxes now weigh barely 11 per cent of the gross weight, while those formerly used represented about 16 $\frac{2}{3}$ per cent of the gross weight. While the rate applied to the weight of the box then represented about the difference between fifth and sixth class rates, it would now be considerably less; and to ship under

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fifth class rates at net weight would at the present time be less favorable to the shipper than to ship under sixth class rates at gross weight.

A number of members or representatives of soap manufacturing firms and companies have testified in this case on behalf of the complainant, but in this, as in the former cases, no other soap manufacturers intervened on behalf of the complainant or otherwise appeared in their own behalf. After the classification was changed by the carriers on January 1, 1900, this complainant, relying upon the decision rendered by the Commission in favor of its predecessor, sought to have the order issued in those cases re-enforced, and thereupon brought this proceeding, alleging herein a further grievance resulting from the increase in the classification of less than carload shipments of soap. As shown in the findings, the defendants have directed special attention to the prosperous condition of complainant, and have laid special stress upon the profits accruing to the latter through its ownership and operation of the Ivorydale & Millcreek Valley Railway, which is used to connect complainant's plant with the initial carriers, and which under a contract with such carriers obtains liberal allowances for terminal services rendered in forwarding and receiving freight for complainant at Ivorydale. If the sole question involved was the reasonableness of rates charged to complainant on its soap traffic, or if the rates exacted from it were drawn into comparison with those charged by defendants to competing soap manufacturers, the profits secured by complainant from the operation of its railway and other special advantages tending to diminish the amount of its transportation expenses would have very material bearing, but that is not the case; the chief question here is as to the justice of the change in the classification of soap, not only as regards the Procter & Gamble Company but as affecting all soap shippers in this classification territory, for we could rightfully make no order respecting such change in favor of complainant which would not apply with equal force on shipments of other soap manufacturers in Official Classification territory. It follows, therefore, that as the case mainly involves the general question of classification it must be decided in accordance with the principles which properly govern the classification of freight articles.

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We have examined the evidence pertaining to the classification of common soap in carloads with great care and have found the facts which appear to be material to the disposition of that branch of the case. Such findings do not bear out the contention of complainant. Soap is analogous in character to articles of general merchandise, particularly those sold in the grocery trade, and which are all in the fifth or higher classes of the classification. It does not move in such great volume, or, to be more explicit, furnish the carriers with such great aggregate tonnage, as to distinguish it specially from other common articles of merchandise; nor is it so low in value as to take it out of comparison in that respect with other fifth class articles and place it in the category of low-grade freights which require the lower sixth class rating. It is conceded to be and is a very desirable traffic for the carrier, but equally so are canned goods, sugar, heavy iron articles and other commodities now included in the fifth class. In the manufacture of soap as conducted by complainant the shipment of large quantities of raw material and fuel is involved, and this furnishes additional traffic to the carrier, but the same thing is true of many other manufacturing industries. These and other matters are set out in detail in the findings, which indicate in substance that soap is a manufactured article of merchandise properly in fifth class as distinguished from the mass of low-grade freights, cheap chemicals and raw products which are in class six and actually move under sixth class rates.

A case involving the classification of hay in Official Classification territory has lately been decided in which it was held that hay is improperly in fifth class and should be carried as sixth class freight. Hay as a raw agricultural product having relatively low value, moving in great volume largely from the West to the East, and apparently furnishing the carriers with greater aggregate tonnage than any single article actually taking class rates, is entitled to transportation at the lowest class rate. Soap as a manufactured article of merchandise not specially low or high in value, and moving under present rates freely in all directions from competing factories in various portions of the classification territory, and furnishing a large but not exceptionally great aggregate tonnage to the carriers, is also entitled to fairly low rates, but upon no reasonable basis of comparison can it be said to

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merit the low classification demanded by hay and which is given to numerous other articles now in the sixth class. It is possible of course to find commodities in class six which may be compared with soap to the advantage of the latter in some respects, and it is equally possible to find articles which have long been in class five that will compare favorably with soap in some respects, but taking into account the general method or system of classification, whereby the sixth class is designed to include only low-grade freights and the fifth class is made to cover the common grades of grocery and other general merchandise, and considering the other special facts set out in the findings, we cannot condemn as unlawful the classification of soap in carloads in class five.

The reasonableness of fifth class rates for soap in carloads, considered independently of the principles governing classification, has been adequately treated in the findings, and beyond mentioning one or two general considerations connected with this feature of the case we see no reason for adding to the statement of facts in this regard. The carriers classified soap in carloads as fifth class freight originally, and only changed it to sixth class in compliance with our order in 1891. However limited the compulsory effect of an order by the Commission may be in the present state of the law, compliance with its requirements cannot be regarded as voluntary action by the carriers. There is nothing to show that the carriers would have changed soap in carloads to sixth class in 1891 or later if no order requiring that to be done had been issued. On the contrary, the carriers' representatives have insisted in this case most strenuously that they have always been dissatisfied with the order of 1890 which was complied with in June of the following year. However that may be, it seems clear that the presumption as to the reasonableness of rates long kept in effect by carriers as a voluntary act on their part does not attach in this case. It may be said, in view of the fact that orders of the Commission can only be enforced by action in the Federal courts, that long compliance with an order of the Commission is in effect voluntary; but we think, when complaint is made to the Commission, and the case goes to hearing and decision, and order against the carriers is issued with which they comply, that there is a marked distinction in the respect here referred to between rates thus established and like or similar rates

applied by the carriers on their volition, and that this distinction is sufficient to remove the presumption of the reasonableness of sixth class carload rates for soap which would arise if such rates had been voluntarily accorded since June, 1891, without the intervention of an order by the Commission.

It appears reasonably certain that the remarkable increase of traffic which began about 1899 and has continued in enlarging volume to the present time would, at the rates in force prior to the advance of January 1, 1900, have furnished the carriers with net revenues equal at least to those received in any previous year. But this fact if fully demonstrated would not, in our opinion, be sufficient of itself to sustain complainant's contention or prove that fifth class rates for carload soap are unreasonable. On the other hand we do not decide that the reasonableness of these rates has been affirmatively established. We regard the primary and controlling question in this case as a question of classification, that is, of *relative rates*, and dispose of it accordingly. In that view it is sufficient to hold that carload soap is not improperly placed in the fifth class and that fifth class rates therefor are not shown to be unlawful. So long as most articles entitled to as low rates as carload soap are put in the fifth class and required to pay fifth class rates, we are not warranted on the evidence before us in condemning the same rating for that commodity. This disposition of the case, however, will not authorize the retention of carload soap in fifth class if the classification of other articles with which soap is compared should be reduced, nor will anything now decided preclude the Commission from holding, in an appropriate proceeding, that fifth class rates in this territory are excessive.

A materially different situation exists in regard to the classification and rates for less than carload shipments of soap. The new class inserted in the Official Classification on March 10, 1900, whereby 20 per cent less than third class but not lower than fourth class rates are provided for less than carload soap and numerous other articles, operates with respect of soap, as above found in this case, to increase materially the rates paid by complainant and others in the section of country about Cincinnati, and presumably the rates paid by other shippers in most parts of the Central West, while it advances in less degree or not at all

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fifth class rates at net weight would at the present time be less favorable to the shipper than to ship under sixth class rates at gross weight.

A number of members or representatives of soap manufacturing firms and companies have testified in this case on behalf of the complainant, but in this, as in the former cases, no other soap manufacturers intervened on behalf of the complainant or otherwise appeared in their own behalf. After the classification was changed by the carriers on January 1, 1900, this complainant, relying upon the decision rendered by the Commission in favor of its predecessor, sought to have the order issued in those cases re-enforced, and thereupon brought this proceeding, alleging herein a further grievance resulting from the increase in the classification of less than carload shipments of soap. As shown in the findings, the defendants have directed special attention to the prosperous condition of complainant, and have laid special stress upon the profits accruing to the latter through its ownership and operation of the Ivorydale & Millcreek Valley Railway, which is used to connect complainant's plant with the initial carriers, and which under a contract with such carriers obtains liberal allowances for terminal services rendered in forwarding and receiving freight for complainant at Ivorydale. If the sole question involved was the reasonableness of rates charged to complainant on its soap traffic, or if the rates exacted from it were drawn into comparison with those charged by defendants to competing soap manufacturers, the profits secured by complainant from the operation of its railway and other special advantages tending to diminish the amount of its transportation expenses would have very material bearing, but that is not the case; the chief question here is as to the justice of the change in the classification of soap, not only as regards the Procter & Gamble Company but as affecting all soap shippers in this classification territory, for we could rightfully make no order respecting such change in favor of complainant which would not apply with equal force on shipments of other soap manufacturers in Official Classification territory. It follows, therefore, that as the case mainly involves the general question of classification it must be decided in accordance with the principles which properly govern the classification of freight articles.

We have examined the evidence pertaining to the classification of common soap in carloads with great care and have found the facts which appear to be material to the disposition of that branch of the case. Such findings do not bear out the contention of complainant. Soap is analogous in character to articles of general merchandise, particularly those sold in the grocery trade, and which are all in the fifth or higher classes of the classification. It does not move in such great volume, or, to be more explicit, furnish the carriers with such great aggregate tonnage, as to distinguish it specially from other common articles of merchandise; nor is it so low in value as to take it out of comparison in that respect with other fifth class articles and place it in the category of low-grade freights which require the lower sixth class rating. It is conceded to be and is a very desirable traffic for the carrier, but equally so are canned goods, sugar, heavy iron articles and other commodities now included in the fifth class. In the manufacture of soap as conducted by complainant the shipment of large quantities of raw material and fuel is involved, and this furnishes additional traffic to the carrier, but the same thing is true of many other manufacturing industries. These and other matters are set out in detail in the findings, which indicate in substance that soap is a manufactured article of merchandise properly in fifth class as distinguished from the mass of low-grade freights, cheap chemicals and raw products which are in class six and actually move under sixth class rates.

A case involving the classification of hay in Official Classification territory has lately been decided in which it was held that hay is improperly in fifth class and should be carried as sixth class freight. Hay as a raw agricultural product having relatively low value, moving in great volume largely from the West to the East, and apparently furnishing the carriers with greater aggregate tonnage than any single article actually taking class rates, is entitled to transportation at the lowest class rate. Soap as a manufactured article of merchandise not specially low or high in value, and moving under present rates freely in all directions from competing factories in various portions of the classification territory, and furnishing a large but not exceptionally great aggregate tonnage to the carriers, is also entitled to fairly low rates, but upon no reasonable basis of comparison can it be said to

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F. C. SAYLES

v.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, AND THE BOSTON & MAINE RAILROAD COMPANY.

Decided April 20, 1903.

Complainant's claim for reparation having been settled by defendants, the case is, in view of the limited testimony presented and other considerations stated, dismissed without prejudice to the institution of a new proceeding.

P. J. Farrell for Complainant.

F. A. Farnham, for N. Y., N. H. & H. R. R. Co.

Edgar J. Rich, for Boston & Maine R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

The complainant in this case, in January, 1902, shipped two cows and a calf from Newport, Vermont, to Pawtucket, Rhode Island, over the lines of the Boston & Maine Railroad Company and the New York, New Haven & Hartford Railroad Company, for which transportation complainant was required to pay a through rate of 55 cents per 100 pounds on an estimated weight of 8,500 pounds, amounting to \$46.75. Complainant claims that the actual weight of the animals transported was only 1,500 pounds, and that the amount exacted of him by the defendant companies was unjust and unreasonable, and in violation of the 1st, 2d, and 3d sections of the Act to Regulate Commerce, and that a reasonable charge for the service rendered would have been on an estimated weight of 3,300 pounds, which would have

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amounted to \$18.15. He therefore asks for an order for reparation to the extent of the excess charge.

The lines of railroad over which the freight was carried were within territory where what is known as the Official Classification is in force, and which may be generally stated to include the territory in the United States east of the Mississippi River and north of the Ohio and Potomac Rivers.

Official Classification No. 22, which took effect January 1, 1902, provided, and the present classification, No. 23, also provides, for estimated weights of live stock, in less than carload lots, as follows:

"One horse, mule, pony, colt, or domestic horned animal will be rated at 4,000 lbs. Man in charge carried free.

"Each additional horse, mule, pony, colt, or domestic horned animal, in same car, to same consignee, at 3,000 lbs.

"Cow and calf together (see note), 4,500 lbs. Man in charge carried free.

"(Note.—Each cow and calf (calf six months old or under) shipped together to be rated at estimated weight of 4,500 lbs.; weight of any other animal shipped with them to be computed without reference to weight of cow and calf.)"

This classification was in force over the line of the New York, New Haven & Hartford Railroad, which carried the freight from Worcester, Mass., to destination.

On the line of the Boston & Maine Railroad, over which the freight was carried from Newport to Worcester, a lower estimate of weights prevailed, because (as was stated at the hearing of the case) of the dairy business carried on by a large proportion of the population along the line of road, which results in a lower rate for carrying this kind of freight. The provision in this respect is as follows:

"One cow, two or three years old, horned animal, or yearling colt, 2,000 lbs.; two animals, 2,800 lbs.; one calf or hog, 500 lbs."

The testimony for the defense, however, showed that where conditions are similar the rates of transportation are practically the same on the roads of each of the defendants. While a man was carried free with complainant's shipment from Newport to Pawtucket, this free carriage is not allowed with less-than-car-
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load shipments on the Boston & Maine Railroad while it is allowed on the New York, New Haven & Hartford Railroad is shown by the above citation from the Classification.

It was alleged by the defendants that the shipment might have been made at an estimated weight of 7,500 lbs. as the gross and netting weights is capable of such estimation.

It appears that the local rate from New York to Portland class, a distance of 133 miles, is 41 cents per 100 pounds. Applied to an estimated weight of 7,500 pounds, would amount to \$31.87. The local rate from Portland class, a distance of 20 miles, is 11 cents per 100 pounds. Applied to an estimated weight of 7,500 pounds, would amount to \$8.25, making a total freight charge of \$40.12.

Defendants proposed that being the freight to destination is 54 cents per 100 pounds, an estimated weight of either 7,500 or 7,000 pounds would be \$40.50. Under the proposed rule of appraisal, if using the estimation of weight, there would aggregate a loss and not make the through rate.

It appears that by oversight or inadvertence, neither of the defendants mentioned nor any knowledge of compliance with against their interests in the service and them of the fact of the defendant's not even their willingness at any time to act as the agent and defendant's ask that the proceeding be dismissed and not be given an opportunity for such settlement.

During the pendency of the proceeding the defendant filed and its cause has been represented by the executor and since the hearing of the case the executor has received and received from the defendant, the New York, New Haven & Hartford Railroad Company \$25.00, in settlement of compliance with the proposed rule of appraisal and the freight and netting estimated submitted regarding the question of classification and the extent of territory and traffic value effects, and after will be ordered dismissing the case without prejudice to any further proceeding for the consideration of that subject.

W. H. H. H.

ULRICK & WILLIAMS

v.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY AND THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Decided May 14, 1903.

Complainant asks reparation on account of rates on ice from Hillsdale and other points in Michigan which, prior to September 3, 1901, were higher over the line formed by defendant roads for the shorter distance to Springfield than for the longer distance to Columbus, the rates to both points having been made the same on that date; but it appeared that other and shorter delivering lines compete for the traffic to Columbus and that the short-line distance to Columbus is less than the short line distance to Springfield. Upon all the facts and circumstances, *held*, that complaint should be dismissed.

John L. Zimmerman for complainant.

F. J. Jerome for L. S. & M. S. Ry. Co.

S. O. Bayless for C. C. C. & St. L. Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

FIFER, *Commissioner*:

The complaint in this case was filed January 9, 1902, by J. F. Ulrick and Edgar A. Williams, and sets forth that the complainants are co-partners engaged in business at Springfield, O., under the firm name of Ulrick & Williams, one branch of their business being the buying of ice at points in the State of Michigan and the shipping of it to Springfield, O., for sale in and about the latter place; that the defendants, the Lake Shore & Michigan Southern Railway Company and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, are common carriers engaged in the transportation of property wholly

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by railroad by continuous carriage between points in the State of Michigan and points in other states, including Springfield, O., and Columbus, O., and as such common carriers are subject to the acts for the regulation of commerce; that the defendants, for the transportation of ice shipped from Norvell, Hillsdale, Bankers and other points in Michigan to Springfield, O., are charging and collecting a rate of one dollar per ton, while for transporting ice from the same Michigan points over the same line, the Cleveland, Cincinnati, Chicago & St. Louis, through Springfield, O., to Columbus, O., they did, up to September 3, 1901, collect eighty cents per ton; that the collection by defendants of this higher rate for the shorter haul to Springfield and of the lower rate for the longer distance, in the same direction, to Columbus was in violation of sections 3 and 4 of the Act to regulate commerce.

The complaint further sets forth that complainants, who deal in natural ice, are compelled to compete at Springfield with manufactured ice and that their margin of profit is cut down, and often destroyed, by the discriminatory freight rates imposed by the defendants on natural ice from Michigan points; that defendants' rate of eighty cents per ton on carload lots to Columbus would afford reasonable compensation; that defendants' rate of one dollar per ton in carload lots from Michigan points as aforesaid to Springfield, O., operates, in itself and in comparison with defendants' rates to Dayton, Columbus, Cincinnati and other points in Ohio and Pennsylvania, to subject complainants to unreasonable and unjust charges and undue and unreasonable prejudice and disadvantage, in violation of sections 1 and 3 of the Act to regulate commerce.

The complaint is accompanied by a statement showing the shipments of natural ice to complainants from February 10, 1900, to August 30, 1901, over defendants' lines from Michigan points to Springfield, O., and upon each of these shipments an alleged overcharge of twenty cents per ton was collected by the defendants, the sum of the alleged overcharges being \$713.47.

The complaint concludes with a prayer asking that an order be made commanding said defendants to cease and desist from the alleged violations of law and to make reparation to

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complainants, and for such other orders as the Commission may deem necessary.

In answering, the Lake Shore & Michigan Southern Railway Company admits that the complainants are engaged in buying and shipping ice as alleged, but admits that it has no line of railroad running to either Springfield, O., or Columbus, O., and that it connects at Toledo with direct lines to Columbus and at Sandusky and Clyde, O., with lines direct to Springfield and Columbus. This defendant further admits and alleges that it has been, and is, engaged in transporting ice in carloads from Hillsdale and other Michigan points to point of connection with said other lines for transportation through to Columbus and Springfield.

It alleges that it has published tariffs showing the rates established for such transportation; that from Hillsdale and other Michigan points named in the complaint to Columbus, O., the most direct route is via this defendant's line to Toledo, and thence via the Hocking Valley Railroad or the Toledo & Ohio Central Railway to Columbus; that the rate fixed for ice in carloads from said Michigan points to Columbus, eighty cents per ton, was established on the basis of carriage over this defendant's line to Toledo, thence over the Hocking Valley or the Toledo & Ohio Central to Columbus, and that this rate is controlled by railroad competition; that the rate to Springfield, one dollar per ton, was based on the fact that ice carried to that point must either pass by the aforesaid route through Columbus and thence by other connections to Springfield, or from Michigan points by way of this defendant's line to Sandusky or Clyde, and thence via the Cleveland, Cincinnati, Chicago & St. Louis to Springfield, either of which routes would make a much longer haul than the haul from Michigan points to Columbus via the Lake Shore & Michigan Southern and the Hocking Valley or the Toledo & Ohio Central, and for that reason the rate to Springfield is twenty cents higher than the rate to Columbus; that the rates of eighty cents and one dollar, respectively, to Columbus and Springfield are reasonable, just and legal, and in fact are very low rates.

This defendant further admits and avers that various ship-

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or railroad by continuous carriage between points in the State of Michigan and points in other states, including Springfield, O., and Columbus, O., and as such common carriers are subject to the acts for the regulation of commerce: that the defendants, for the transportation of ice shipped from Norvell, Hillsdale, Bankers and other points in Michigan to Springfield, O., are charging and collecting a rate of one dollar per ton, while for transporting ice from the same Michigan points over the same line, the Cleveland, Cincinnati, Chicago & St. Louis, through Springfield, O., to Columbus, O., they did, up to September 3, 1901, collect eighty cents per ton: that the collection by defendants of this higher rate for the shorter haul to Springfield and of the lower rate for the longer distance, in the same direction, to Columbus was in violation of sections 3 and 4 of the Act to regulate commerce.

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It alleges that it has published tariffs showing the rates established for such transportation; that from Hillsdale and other Michigan points named in the complaint to Columbus, O., the most direct route is via this defendant's line to Toledo, and thence via the Hocking Valley Railroad or the Toledo & Ohio Central Railway to Columbus; that the rate fixed for ice in carloads from said Michigan points to Columbus, eighty cents per ton, was established on the basis of carriage over this defendant's line to Toledo, thence over the Hocking Valley or the Toledo & Ohio Central to Columbus, and that this rate is controlled by railroad competition; that the rate to Springfield, one dollar per ton, was based on the fact that ice carried to that point must either pass by the aforesaid route through Columbus and thence by other connections to Springfield, or from Michigan points by way of this defendant's line to Sandusky or Clyde, and thence via the Cleveland, Cincinnati, Chicago & St. Louis to Springfield, either of which routes would make a much longer haul than the haul from Michigan points to Columbus via the Lake Shore & Michigan Southern and the Hocking Valley or the Toledo & Ohio Central, and for that reason the rate to Springfield is twenty cents higher than the rate to Columbus; that the rates of eighty cents and one dollar, respectively, to Columbus and Springfield are reasonable, just and legal, and in fact are very low rates.

This defendant further admits and avers that various ship-
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tance 190 miles. The shortest line from Hillsdale to Springfield is via the Lake Shore & Michigan Southern to Clyde, 105 miles, and thence via the Cleveland, Cincinnati, Chicago & St. Louis to Springfield, 114 miles; total distance 219 miles. The short-line distance is therefore 29 miles greater to Springfield than to Columbus.

The testimony of complainant Ulrick showed that the complainant firm had endeavored to extend their business in the handling of natural ice shipped from the Hillsdale district to cities adjacent to Springfield, with the result that they found that such extension was barred except as to one city, Urbana, O., by reason of the status of rates for transportation to Springfield and Columbus, which gave to Columbus an advantage of twenty cents per ton; that the complainants estimate their losses by reason of this difference in rates at something above one thousand dollars for the year 1900, and a like amount for the year 1901; that the difference of twenty cents per ton in the cost of ice to them as compared with the cost to shippers receiving ice at Columbus from Hillsdale district points made it impossible for them to compete with the Columbus dealers or with dealers in natural and manufactured ice at Dayton and elsewhere.

While the great bulk of the ice shipped from the Hillsdale district to Columbus passed over the Lake Shore & Michigan Southern from points of origin to Toledo and thence over the Hocking Valley or the Toledo & Ohio Central to Columbus, a portion of it was transported over the Lake Shore to Sandusky and there offered to the Cleveland, Cincinnati, Chicago & St. Louis for transportation to Columbus at eighty cents per ton, the competitive rate, and was accepted at that rate. While the distance from Sandusky to Columbus via the Columbus, Sandusky & Hocking is 111 miles, the distance from Sandusky to Columbus via the Cleveland, Cincinnati, Chicago & St. Louis is 176 miles. The only line which the Cleveland, Cincinnati, Chicago & St. Louis operates between Sandusky and Columbus passes through Springfield, which is by that line 45 miles nearer than Columbus to Sandusky and Hillsdale district points.

In 1900 and 1901 the rate from Hillsdale district points to

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Dayton was one dollar and to Cincinnati one dollar, though the distances are, respectively, 24 miles and 84 miles longer than from the same points of origin to Springfield, which city had the same rate of one dollar.

The Cleveland, Cincinnati, Chicago & St. Louis could have turned over the ice at Carey, O., to another line for Columbus and divided its proportion of the rate, in which case the ice would not have passed through Springfield en route to its destination, but this change of route would not in any way have affected the interests of the consignees or the complainants in this case.

Before ice began moving in large quantities from the Hillsdale district, the rate from Michigan points was the same, \$1.25 per ton, carloads, to both Columbus and Springfield. Active competition was inaugurated by the Ann Arbor and Pere Marquette company, which competition cut the rate to \$1.10 to both Columbus and Springfield. A reduction from Sandusky followed, and the Lake Shore & Michigan Southern made a \$1.10 rate from Hillsdale district points to Columbus via the Hocking Valley. In 1889, when 4,000 tons were offered for shipment from the Hillsdale district to Springfield, the Lake Shore & Michigan Southern tried to make a one-dollar rate via Toledo, the Cincinnati, Hamilton & Dayton, and thence via the Ohio Southern to Springfield, but failed. Afterwards a route was established from the Hillsdale district to Columbus, via Sandusky and the Columbus, Sandusky & Hocking, with a rate of one dollar. Upon this the through rate to Columbus was based. Later, the same rate was put in over the Cleveland, Cincinnati, Chicago & St. Louis, via Sandusky and Clyde, to Columbus.

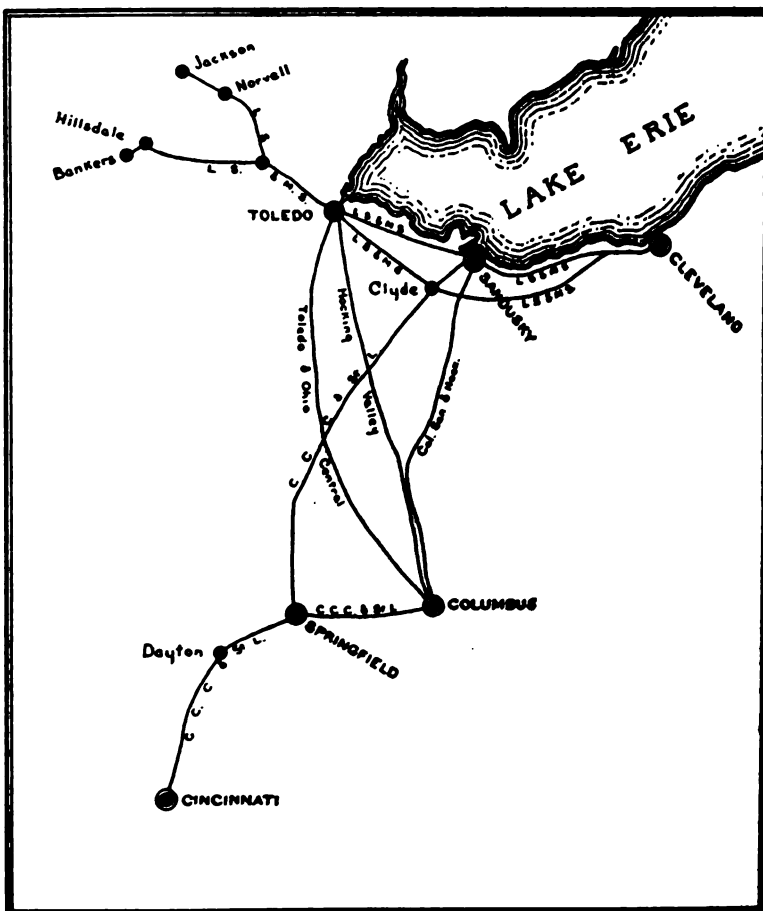
The Ann Arbor and Pere Marquette took the initiative in cutting down the one-dollar rate to Columbus in order to move ice originating on its lines and, as the result of competition between various ice interests on those roads and on the Lake Shore & Michigan Southern, the eighty-cent rate to Columbus was made. This was based on the route via Toledo and the Hocking Valley or the Toledo & Ohio Central, and there is no testimony

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that this rate was complained of by Springfield until the complaint in this case was filed.

Effective September 3, 1901, the rate of eighty cents to Columbus was raised to one dollar, while the one-dollar rate to Springfield remained unchanged. At the same time that the Columbus rate was raised ice rates were similarly raised to 24 other points.

The accompanying map outlines the territory covered by the tariffs considered in this case.



CONCLUSIONS.

The evidence in this case and its bearing upon the issues formed have been so fully considered in the foregoing statement of facts that any extended discussion in relation thereto is unnecessary.

It is complained, first, that while the rate on ice from the Hillsdale district, in the State of Michigan, to Springfield, Ohio, was and is \$1.00 per hundred pounds, the rate from the same points to Columbus, Ohio, was but 80 cents for a period prior to September 3, 1901, and that this differential in rates created an unjust discrimination against complainants' business at the city of Springfield; second, that the Cleveland, Cincinnati, Chicago & St. Louis Railway Company in the carriage of this freight to Columbus violates the long and short haul clause of the Act to regulate commerce; third, that the rate to Springfield in question is unreasonably high when compared with the rates to Cincinnati and other points in the States of Ohio and Pennsylvania, the haul to the last-named points being longer than it is to Springfield or Columbus.

We shall consider these questions in the order named.

The facts show that by the shortest rail line the distance from Hillsdale to Columbus is 29 miles less than the distance by the shortest rail line from Hillsdale to Springfield. This fact, together with the further fact that there is sharp railroad competition at Columbus in the carriage of this product which does not prevail at Springfield, is the reason given why the rate to Columbus was made 20 cents less than the rate to Springfield.

While this adjustment of rates may have worked discrimination against Springfield, yet we are unable to find from the evidence in the record that such discrimination was unjust, in the sense contemplated by the law as meriting condemnation.

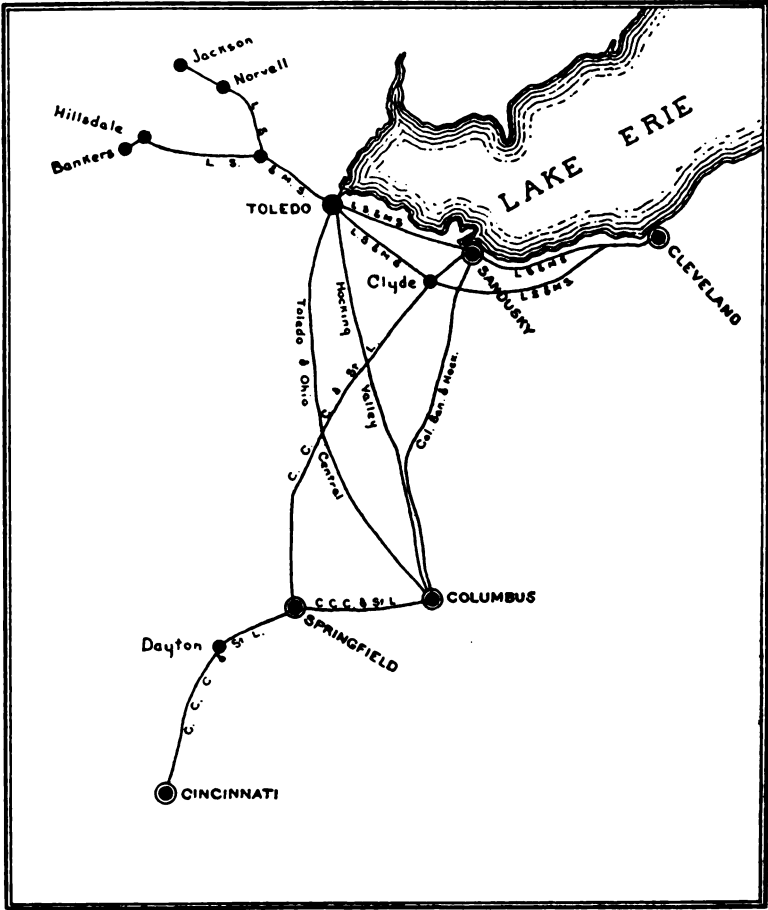
Regarding the second question, it may be said that the freight in question originates on a line of the Lake Shore & Michigan Southern Railway Company and is carried, in every instance, over the rails of that company to Toledo. At this point portions of the ice destined to Columbus and Springfield are de-

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livered to the Hocking Valley Railway Company and to the Toledo & Ohio Central Railway Company, which roads have each a direct line to Columbus, and also by their connections reach Springfield. Other portions of the ice brought to Toledo by the Lake Shore & Michigan Southern Railway Company are carried by this company on its own rails either to Sandusky or Clyde, where it is delivered to the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, which by its own rails reaches both Columbus and Springfield. It has a direct line from Sandusky to Springfield, but in order to transport freight to Columbus over its own rails it must take it through Springfield where the freight is transferred to another line of the company, and then carried on to Columbus, a distance of 45 miles. It will be observed that the shortest distance by rail from Sandusky to Columbus is much less than the distance direct from Sandusky to Springfield, and that the line made by the Cleveland, Cincinnati, Chicago & St. Louis is much the longest rail line between Sandusky and Columbus. The published tariff which established an 80-cent rate to Columbus over the Cleveland, Cincinnati, Chicago & St. Louis through Springfield, it is insisted, constitutes the violation of the Act to regulate commerce complained of.

This defendant, however, insists that it is not responsible in any way for the Columbus rate; that from Toledo to Columbus the rate is fixed by the Hocking Valley Railway Company, which is the shortest rail line between those points, and that from Sandusky to Columbus the rate is fixed by the Columbus, Sandusky & Hocking Railroad Company, which is the shortest line between those points. This defendant maintains that under these circumstances it is compelled to meet the Columbus rate or go out of the ice carrying business at that point; that if it does not carry the freight to Columbus for 80 cents, the freight will be carried by other and shorter lines and that the result will in that event be the same to the business of complainants; and from all the facts and circumstances appearing in this record, there is, it seems to us, much plausibility in this conclusion.

The evidence in the record bearing upon the remaining question is as follows:



City, Missouri, 581 miles; and that by way of the Missouri Pacific Railway Wichita is 404 miles from Sugar City, Colorado, and Kansas City, 583 miles.

Complainant further alleges that, although shipments from Rocky Ford to Kansas City over the A., T. & S. F. Railway pass through Hutchinson and Newton, the rates per hundred pounds on sugar in carload lots are 32½ cents to Hutchinson, Newton, Wichita and Arkansas City, Kansas, and 25 cents to Kansas City, Missouri; and that, although shipments from Sugar City over the Missouri Pacific to Fort Scott, Kansas, pass through Wichita, the rates are 32½ cents per hundred pounds on the transportation of sugar from Sugar City to Wichita and Larned, Kansas, 27 cents to Fort Scott, Kansas, 25 cents to Kansas City, Missouri, and 30 cents to St. Louis, Missouri.

That such rates are unjust and unreasonable, generally and relatively, subjecting Wichita, its merchants, dealers and shippers to unreasonable prejudice and disadvantage; and the complainant prays for an order restraining the defendants from such violation of the Act to regulate commerce.

The answer of the Missouri Pacific Railway Company admits the principal allegations of the complaint, denying, however, the accuracy of rates quoted and averring that different circumstances and conditions existing at Fort Scott, Kansas, justify the lesser rate to that point than to Wichita though both are on the same line, and Fort Scott is the longer distance; and enters a general denial of any violation of the Act to regulate commerce.

The answer of the Atchison, Topeka & Santa Fé Railway Company specifically admits the allegations of the complaint, except in section 6, to which it enters general denial of violation of sections 1, 2, 3 or 4 of the Act; and justifies the lower rate to Kansas City on the ground that Kansas City is a greater railroad center than Wichita and is subject to competition from a number of lines greater than the number competing at Wichita.

The facts as presented by the complaint, answer, testimony, and arguments are, so far as they relate to the issue, as follows:

Wichita, the locality which the complaint alleges is unjustly discriminated against, is on the line of the Missouri Pacific Rail-

way from Sugar City to Fort Scott, and is 28 miles by rail from Newton, the latter being on the direct line of the Atchison, Topeka & Santa Fé Railway from Rocky Ford to Kansas City.

From Sugar City, Colorado, the distance to Wichita is 405 miles; to Kansas City 569 miles; to St. Louis 842 miles.

From Rocky Ford, Colorado, the distance to Newton is 380 miles; to Wichita 407 miles; to Arkansas City 460 miles; and to Kansac City 581 miles.

The rates at the date of filing complaint were as follows: To Kansas City 25 cents; to Fort Scott 27 cents; to Hutchinson, Newton, Arkansas City, Larned and Wichita 32½ cents, and to St. Louis 30 cents per 100 pounds.

The Missouri River points are in a territory which is the common meeting ground of the world's sugars, and the competition of markets, of railway lines, and by water has kept the rates in this territory in a condition of disturbance. The New York rate on sugar is 34 cents per 100 pounds to Kansas City, about 1,500 miles, and 42 cents to Wichita; the through rate to the latter point being 7 cents less than the combination rate of 34 cents to Kansas City and 15 cents local.

California sugar reaches Kansas City at a rate of 55 cents with a full local back to Wichita of 15 cents, making the through rate to Wichita 70 cents per 100 pounds.

The Mallory line via Galveston had a 33-cent rate to Kansas City. The New Orleans rate was then reduced from 27 to 22 cents to Kansas City.

Colorado sugars reached Kansas City at 25 cents, and Wichita and other points between at 32½ cents.

Lehi, Utah, had the California rate to Kansas City; and for a short time this rate was also used at Wichita, but the California intermediate rate was soon applied to Wichita and the rates are now the same as the coast rates, 55 and 70 cents per 100 pounds.

When the beet sugar enterprises were about to be inaugurated at the Colorado points, the projectors, sensible of the great extent to which they were dependent upon transportation rates to secure markets, sought conferences with the railroad authorities to learn what burdens would be imposed upon their products.

By way of encouragement to the establishment of the business, which would add to the wealth of a territory, enhance the value of the lands, add to the population and, directly and incidentally, increase the volume of business, the railways offered a rate of 25 cents per 100 pounds to Kansas City. This was one-half the rate from the Pacific coast in effect at that time and was satisfactory, as was the explanation that the 25-cent terminal rate to Kansas City could not be applied to intermediate points, but that as the Kansas City rate from Colorado points was one-half of the California rate, the local back to Wichita and other points would be $7\frac{1}{2}$ cents per 100 pounds, or one-half the local rate charged on Coast sugar, which was 15 cents. This explains the odd rate of $32\frac{1}{2}$ cents per 100 pounds to Wichita and other points from the Colorado refineries, which was considered by the refiners at least a living rate, since, on that understanding the sugar industry was established.

But the dealers in Wichita find themselves confined to a narrow territory, not only because they are charged from the Colorado refineries rates higher than those charged Kansas City, but also because out of Wichita a class rate on sugar prevails higher than the commodity rate on this article out of Kansas City; the result being that Kansas City sugar meets Wichita sugar in competition within a comparatively few miles of the latter city.

Since the filing of the complaint various tariffs have been filed by the defendant roads making certain changes in the rates in dispute from Sugar City and Rocky Ford to Wichita, as is shown by the following statement:

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Statement showing rates on Sugar from May 2, 1902, to present date from Sugar City, Colo., and Rocky Ford, Colo., to points shown below.

To	Rates in cents per 100 pounds From									
	Sugar City, Colo.,					Rocky Ford, Colo.,				
	May 2, 1902.	June 2, 1902.	Nov. 11, 1902.	Nov. 25, 1902.	Jan'y 1, 1903. to date.	May 2, 1902.	June 7, 1902.	Oct. 16, 1902.	Jan. 1 1903.	April 6, 1903. present rates.
Kansas City, Mo.	25	20	20	20	25	25	25	20	25	25
Wichita, Kan.	32½	27½	20	20	25	32½	32½	27½	32½	25
Hutchinson, Kan.	32½	27½	20	20	25	32½	32½	27½	32½	25
Ft. Scott, Kan.	27	22	22	22	27	30	30	30	30	30
St. Louis, Mo.	30	30	30	27	30	30	30	30	30	30

The defendant roads, having complied with the contention of the complainant and interveners by the establishment and publication of rates on sugar from Sugar City and Rocky Ford, Colorado, to Wichita and Hutchinson, Kansas, no higher than those in effect to Kansas City, have removed the cause of complaint, thus avoiding the necessity of any order, and the complaint is therefore dismissed.

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S. S. DAISH & SONS

v.

THE CLEVELAND, AKRON & COLUMBUS RAILWAY
COMPANY AND THE BALTIMORE & OHIO RAIL-
ROAD COMPANY.

Decided June 18, 1903.

Complainant alleged unjust discrimination against it in favor of other shippers by reason of unreasonable delay in forwarding and delivering a carload of hay consigned from Condit, O., to Washington, D. C., and prayed for an award of damages. *Held*, That no unjust discrimination or undue prejudice to complainant having been shown, the complaint should be dismissed.

John B. Daish for complainant.

Hugh L. Bond for Baltimore & Ohio R. R. Co.

A. P. Burgwin for Cleveland, Akron & Columbus Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

The complainant in this case is a corporation located in Washington, D. C., and dealing in hay and other merchandise. The defendants are common carriers by railway engaged in interstate commerce.

Complainant claims that defendants are guilty of unjust discrimination by reason of unreasonable delay in forwarding and delivering a carload of baled hay from Condit, O., to Washington, D. C., resulting in damages to complainant in the sum of \$1,159.20 for the payment of which an order of the Commission is prayed for.

Defendants deny any unreasonable delay or unjust discrimination.

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FINDING OF FACTS.

There is no real disagreement as to the facts in this case, the controversy being mainly as to whether they establish any violation of the Act to regulate commerce.

During the recent great strike of anthracite coal miners and subsequently, until the demand for anthracite fuel was somewhat relieved by a new supply, there existed an unprecedented congestion of traffic upon all lines of railroad connecting with the field of bituminous coal, which was largely used to supply the deficiency of anthracite. This congestion resulted in more than usual delay in the forwarding and delivery of freight—especially east-bound freight—over railway lines through this bituminous territory, and particularly the Baltimore & Ohio Railroad, which is one of the principal carriers of bituminous coal.

The production of hay in the eastern sections of the United States, including West Virginia, Virginia and Maryland, during the season of 1902, was very much less than usual, and inadequate to supply the demand at Baltimore, Washington and other points. To meet this demand complainant and others in Washington endeavored to ship hay from Ohio and other States west of the bituminous coal field. The traffic conditions interfering with speedy shipment of hay over lines in the West induced the purchase of the commodity at the eastern points named from any source where it could be secured, and caused an increase in price at such points of from one to two dollars per ton over the prices which would otherwise have prevailed.

In the usual course of business Messrs. J. P. McAlister & Company, on December 8, 1902, shipped from Condit, Ohio, via the Cleveland, Akron & Columbus Railway, and the Baltimore & Ohio Railroad, defendants, a car of baled hay weighing 20,000 lbs. at a rate of 20 cents per hundred pounds to complainant at Washington, D. C. The car arrived at Columbus, the junction of the defendants' roads, December 10. Some uncertainty exists as to the exact date of its delivery to the Baltimore & Ohio Railroad Company; but it is conceded by counsel for said company that the car came into its possession sometime previous to December 27. On January 29, 1903, complainant ten-

dered to the agent of the Baltimore & Ohio Railroad Company at Washington, D. C., the bill of lading and the freight charge on the car of \$40 and \$1.00 terminal charge at Columbus, when he was informed by the agent of the company that the car was not in Washington; whereupon, complainant commenced this proceeding before the Commission, January 31.

In consequence of the great difficulty and delay in forwarding and delivering east-bound freight from territory west of the bituminous coal region, the Baltimore & Ohio Railroad Company issued to its connections what are termed "embargo notices" to the effect that certain kinds of freight would not be accepted by it.

The first embargo notice was issued December 26, 1902, and this was followed by others with modifications or changes as follows:

"On and after December 27th, until further notice, the Baltimore & Ohio Railroad cannot accept carload freight, except live stock and perishable, from connections west of Pittsburg, Wheeling and Parkersburg, destined to points on, or via, its lines east of Pittsburg, Moundsville and Parkersburg."

"On and after January 5th, until further notice, the Baltimore & Ohio Railroad cannot accept carload freight, except live stock and perishable, from connections at junction points west of Pittsburg, Wheeling and Parkersburg, destined to points on, or via, its lines east of Versailles, Pa., Moundsville and Parkersburg, W. Va."

"On and after January 6th, until further notice the Baltimore & Ohio Railroad cannot accept carload freight from connections, except as noted below, at junction points west of Pittsburg, Allegheny, Wheeling and Parkersburg, destined to points on, or via, its lines east of Versailles, Pa., Moundsville and Parkersburg, W. Va.

"The following traffic is excepted from this embargo notice:

"First. Live stock, perishable freight, and material or supplies for the Baltimore & Ohio Railroad Company.

"Second. Freight loaded within the switching limits of connecting lines at B. & O. junction points on and north of the line
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from Allegheny to Chicago, inclusive. (Note that traffic loaded within the switching limits of connecting lines at B. & O. junctions south of Akron, south of Warwick, south of Lodi or south of Chicago Junction, is not exempted from the embargo.)"

"Effective on and after January 28th, until further notice the Baltimore & Ohio Railroad cannot accept carload freight from connections at Wheeling, W. Va., or at junctions west of Pittsburgh and Allegheny, Pa., and Wheeling and Parkersburg, W. Va., when destined to points on, or via, the B. & O. R. R. east of Cumberland, Md.

"The following traffic is exempted from this embargo:

"First. Live stock, perishable freight, and material or supplies for the Baltimore & Ohio Railroad Company.

"Second. Freight loaded within the switching limits of connecting lines at B. & O. R. R. junction points.

"Third. Freight originating on the B. & O. S. W. R. R."

"Effective on and after February 5th, until further notice the Baltimore & Ohio Railroad cannot accept carload freight from connections at Wheeling, W. Va., or at junctions west of Pittsburgh and Allegheny, Pa., and Wheeling and Parkersburg, W. Va., when destined,

"First to Green Spring, W. Va.

"Second. To points on connecting lines, via Cherry Run or Martinsburg, W. Va.

"Third. To points on, or via, the B. & O. R. R. east of Baltimore, Md.

"The following is exempted from this embargo:

"(a) Live stock, perishable freight, and material or supplies for the Baltimore & Ohio Railroad Co.

"(b) Freight loaded within the switching limits of connecting lines at B. & O. R. R. junction points.

"(c) Freight originating on B. & O. S. W. R. R."

Supplement No. 1 to Embargo Notice No. 26 read as follows:

"Effective March 10th, the embargo placed by this company on carload freight from Western connections in Embargo Notice

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No. 26 will be raised and shipments may be resumed as heretofore."

Previous to these embargoes a precautionary embargo notice had been issued and was in force during the G. A. R. encampment at Washington, in October, 1902.

As asserted by defendants, the object of these notices was to prevent the crowding of the main tracks of the road over which coal was being transported, and keep the lines open for the carriage of coal and other kinds of freight excepted from the embargo; to release and forward as rapidly as possible freight already in its yards and upon its sidings and that its movement might not be prevented or delayed by new freight offered by connecting roads which, if accepted, would only increase the existing congestion.

The Baltimore & Ohio Railroad Company undertook, as far as possible, to carry freight originating on its own lines and in its own yards, in preference to that offered by its connections, and, therefore, no embargo was placed on such traffic. Modifications or changes of the embargo notice of December 26 were made from time to time as the conditions of traffic justified, and freights were received from such sections of the country and of such character of shipment as could be most easily forwarded, or which offered the least inconvenience to shippers and the least obstruction to the movement of coal and other necessary traffic over its own line. It was not unusual for restrictions to be placed upon certain kinds of traffic to certain places, but no such general restriction had ever before been found necessary.

Similar restrictions upon traffic were made by other railway companies on the rail lines they operated over which coal was being transported during this strike period.

It is shown, however, that cars of hay were carried over the lines of the Baltimore & Ohio Railroad Company, defendant, from western points to Washington and Baltimore, as follows:
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No. of Car.	Point of Origin.	Date of Shipment.	Where Received by R. & O. R. R.	Destination.	Date of Arrival.	Days.
N. Y. C. 9433	Valparaiso, Ind.	Oct. 23	Painesville, O.	Baltimore	Dec. 27	66
" 9584	" "	" 23	" "	"	" 27	65
N. P. 15997	" "	Nov. 15	" "	"	" 29	44
B. & O. 94382	Condit, O.	Dec. 8	Columbus, "	Washington	Feb. 11	65
" 39485	Yale, Mich.	" 18	"	"	" 3	52
" 26321	Pere Marquette R. R.	" 23	Toledo, "	Baltimore	Jan. 12	21
" 12138	Flint, Mich.	" 26	"	Washington	Feb. 8	39
" 6340	Jasper, "	Jan. 1	"	Baltimore	Jan. 17	16
" 584-2	Wellington, O.	" 6	E. of Pittsburg	"	" 20	14
P. L. E. 906	Meadville, Pa.	" 7	" "	"	" 27	30
P. R. R. 98291	Wellington, O.	" 8	" "	"	" 30	23
" 84890	Grand Trunk Ry.	" 9	" "	"	" 30	21
" 66940	" "	" 13	Fostoria, O.	"	" 28	15
H. V. 8570	Sandusky, O.	Nov. 6	Wheeling, W. Va.	"	Dec. 1	26
B. & O. 83531	Scipio, O.	" 22	"	"	" 17	26
" 65850	Medina, O.	Jan. 14	"	"	Jan. 24	10
" 166078	Hicksville, O.	" 16	"	"	" 30	14
" 39045	Chicago Junc.	" 16	"	"	" 27	11
" 84034	" "	" 16	"	"	" 29	13
" 67092	" "	" 16	"	"	" 29	18

Of the foregoing list, which includes the car complained of, three from Valparaiso were shipped from two to six weeks before the shipment of complainant's car and were from 44 to 66 days in transit. Complainant's car was 65 days in transit. The cars from Yale and Flint, Mich., shared the same fate of delay with other shipments, having been in transit 52 and 39 days, respectively. Cars from the Grand Trunk Ry. were north of the line from Allegheny to Chicago, and at the date of shipment were not covered by the embargo. Cars from Wellington, Ohio, and Meadville, Pa., were taken up by the Baltimore & Ohio Railroad east of Pittsburg, and, therefore, escaped the embargo. The last seven cars in the list originated on the line of the Baltimore and Ohio Railroad, and were not covered by the embargo. The only cars which seem to have "slipped through" the embargo (in the language of one of the witnesses) were two, one from the Pere Marquette road, which occupied only 21 days, and the other from Jasper, Mich., which occupied 16 days. The average period elapsing between shipment and delivery of cars received from connecting lines was 35 days—the shortest period being 14 days and the longest 66 days, while the average period of transit for the seven cars originating at points on the Baltimore & Ohio Railroad was 16 days. One witness testified that it was not unusual during this period for a car to be out for two months; but that time was longer than the average.

The complainant alleges that ten days is a reasonable time for shipment and delivery of carload freight from the section where this car originated to Washington; and while there is no direct testimony on the point, it is not specifically denied and may be assumed to be correct.

Complainant, on account of failure of arrival of carload of hay when expected, was under the necessity of purchasing locally another car at a net cost of \$258.60, or \$20.00 per ton.

The car purchased in Condit, Ohio, did not arrive in Washington until February 10 or 11, when complainant was notified of the fact, but did not, however, accept the car until about February 20, the delay having occurred pending the arrival at an understanding that acceptance of the car and payment of charges would not prejudice complainant's claim under this proceeding.

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Complainant paid draft of \$114.16 for cost of hay on January 29, and about February 20 paid the freight charge of \$41 above referred to, total \$154.16, with the demurrage charge of eight dollars added for the time elapsing from arrival of car until its acceptance, less 48 hours under the ordinary rule of the company.

Had the car arrived in the usual time it could have been sold for \$16.50 to \$17 per ton, or for \$165 to \$170. When the car finally came into the possession of complainant it was sold for \$19 per ton, or \$190, or \$2.00 to \$2.50 per ton more than it could have been sold for had it arrived within the ordinary period of transit, and at an advance of \$35.84 over cost and freight.

CONCLUSIONS.

From the foregoing statement of facts the Commission arrives at the following conclusions:

The anthracite coal strike, for which the defendant railroad companies do not appear to be in any way responsible, necessitated the transportation of bituminous coal from the mines in West Virginia, Maryland and Pennsylvania to eastern points to supply the demand for fuel for industrial and domestic use, and this operated to prevent the shipment of some other classes of freight. Defendants probably had the right to give such freight the preference, and it was not improper that live stock, perishable freights, and material or supplies for the railroad should be excepted from any embargo imposed.

It was also proper that embargo notices should be given such connecting lines so as to avoid the further congestion of freight in junction freight yards; and in the forwarding of freight received from connecting lines it was proper that cars should be forwarded as far as practicable in the order of their receipt, so that there should be no unreasonable discrimination or preference which might be avoided.

Analyzing the testimony regarding the various cars passing over defendants' lines, it is found that only two (one from Jasper, Mich., and one from the Pere Marquette R. R.) "slipped through" to destination after the receipt and before the delivery

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of complainant's car, showing that the embargo was practically maintained and enforced, and, therefore, no cause exists for any complaint or discrimination in favor of individuals. Neither does there appear to have been any undue preference given or favors shown to localities by defendants to the undue prejudice or disadvantage of complainant, or the dealers in Washington and Baltimore; there being a general inability to supply cars as well as motive power—engines—for the movement of freight.

The necessity for keeping open for traffic the two main tracks of defendants' lines east of Cumberland required great care so that passenger travel and extraordinary and necessary freight transportation should not be obstructed or interfered with.

The Commission, however, is unable to find from the testimony that any undue or unreasonable prejudice or disadvantage resulted to complainant, or that the defendants were guilty of unjust discrimination by reason of any of the acts complained of. The complaint therefore should be dismissed.

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IN THE MATTER OF THE APPLICATIONS OF CERTAIN RAILROAD COMPANIES FOR AN EXTENSION OF TIME WITHIN WHICH TO COMPLY WITH THE PROVISIONS OF THE ACT OF MARCH 2, 1903, RELATING TO SAFETY APPLIANCES.

Decided October 15th, 1903.

1. The discretionary power lodged with the Commission to extend the period of time within which carriers are required to comply with the Safety Appliance Act, as amended March 2, 1903, was plainly designed to afford relief in cases which would otherwise inflict special hardship upon the public and the carriers, and should only be exercised under such circumstances and for such short length of time as were contemplated by the framers of the statute and are plainly inferable from its terms.
2. Extensions of time granted to petitioning carriers to comply with certain provisions of the Act of March 2, 1903, amending the Safety Appliance Act of March 2, 1893, as amended April 1, 1896.

E. D. Kenna, Robert Dunlap and A. B. Browne of Britton & Gray, for the Atchison, Topeka & Santa Fe Railway System.

A. B. Browne of Britton & Gray for the St. Louis & San Francisco Railroad Company and affiliated lines.

Edgar J. Rich for the Boston & Maine Railroad.

Joseph I. Doran and Theodore W. Reuth for the Norfolk & Western Railway Company.

George V. Massey, Francis I. Gowen and L. L. Gilbert for the Pennsylvania Railroad Company and affiliated lines; and the Grand Rapids & Indiana Railway Company.

William J. Kelly for the Long Island Railroad Company.

Robert Ramsey for the Cincinnati, Hamilton & Dayton Railway Company; and the Cincinnati, Indianapolis & Western Railway Company.

George F. Brownell and H. A. Taylor for the Erie Railroad Company and affiliated lines.

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J. F. Vaile for the Denver & Rio Grande Railroad Company.
E. C. Henderson, E. E. Whitted and Tyson S. Dines for the Colorado & Southern Railway Company.

F. H. Janvier for the Lehigh Valley Railroad Company.

H. L. Bond, Jr., and Geo. Dobbins Penniman for the Baltimore & Ohio Railroad Company.

Claudian B. Northrup for the Hartwell Railway Company,
J. D. Matheson, Lessee.

C. O. Hunter for the Hocking Valley Railway Company;
 Kanawha & Michigan Railway Company; Toledo & Ohio Central Railway Company, and the Zanesville & Western Railway Company.

L. Harry Richards for the Potomac, Fredericksburg & Piedmont Railroad Company.

J. B. Flanders for the Detroit Southern Railroad Company.

Hooper & Dykes for the Albany & Northern Railway Company.

P. H. Morrissey for the Brotherhood of Railroad Trainmen.

John J. Hannahan for the Brotherhood of Locomotive Firemen.

A. B. Garretson for the Order of Railway Conductors.

Frank T. Hawley for the Switchmen's Union of North America.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman*:

The Act of Congress of March 2, 1893, commonly known as the Safety Appliance Law, amended April 1, 1896, was further amended in important particulars by an Act approved March 2, 1903. This amendment by its terms was to take effect September 1, 1903. The original law authorized the Commission "upon full hearing and for good cause" to extend the period within which any common carrier should comply with its requirements. This authority was continued in the amending statute and applies to its provisions. The matters herein considered and the orders made by the Commission relate exclusively to the amendment of 1903.

Shortly after the passage of this amendment, and under date
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of April 6, 1903, the Commission mailed a pamphlet copy of the law with its amendments to every operating railroad company in the United States, so far as known, together with a letter calling attention to the changes made by this last amendment. Among other things it was pointed out that, whereas the original law applied to interstate trains and cars used in interstate commerce, the amended act applies to all roads engaged in interstate commerce and generally to all vehicles used upon such roads. The object of this communication was to apprise the carriers of their duties and obligations under the amendment and the date when it became effective, to the end that such of them as felt obliged to ask an extension might make their application and present their proofs in due time.

Afterwards and prior to September 1, 1903, a number of petitions for relief were filed with the Commission. A hearing was had on August 5th and 6th of such applications as had then been filed, and an order was subsequently made granting a temporary extension until October 15, 1903, to such carriers as made application prior to and shortly after this hearing. In each case notice of the application and the date when the same would be heard was required to be posted upon the bulletin boards of the petitioners and published in a newspaper of general circulation on their respective lines. Notice was also given to the chief executive officers of the five principal organizations of railway employees and representatives of those organizations were present at the hearing. A further hearing was had on October 12, 1903, and the matter has been duly considered by the Commission.

These applications for relief are of four classes. The first class relates to the use of grab irons on the front end and sides of locomotives. The various roads comprising the Atchison, Topeka & Santa Fe System asked for an order dispensing altogether with the requirement to place grab irons on locomotives, on the ground that they increased rather than diminished the hazard of employees; and the American Railway Master Mechanics' Association, representing the carriers generally, requested in effect an extension in respect of this appliance until the matter could be further considered.

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In this connection it may be observed that the authority of the Commission as regards the use of grab irons appears to be greater than its authority respecting other safety appliances. The original law made it unlawful after July 1, 1895, *until otherwise ordered by the Interstate Commerce Commission*, to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars. The amendment of 1903, among other things, extends the requirement of grab irons to all locomotives, tenders, cars and similar vehicles used on any railroad engaged in interstate commerce, but the provision, "until otherwise ordered by the Interstate Commerce Commission," undoubtedly applies to the amendment so far as grab irons are concerned. It would seem, therefore, that the Commission may in effect abrogate this provision of the law at any time. If it can do so, it can probably partially relieve a carrier and so in a way practically regulate the use of grab irons. The act does not prescribe the size, form, or precise location of this appliance. Consequently, there may be a technical compliance with the law in this regard, or such compliance as would prevent prosecution, with so called grab irons which would increase rather than lessen the liability to accident. However this may be, the Commission is convinced that the objects of the law will be much better accomplished if those interested agree upon some uniform practice in the matter of grab irons which shall be adopted by voluntary action and receive in some form the sanction of the Commission.

The Commission is informed that this subject has been taken up by the American Railway Master Mechanics' Association; that a committee has been appointed which has already had one or more meetings with representatives of the employees, and that within a reasonable time some plan will probably be adopted which will insure uniformity in the construction and location of this appliance. Believing that the pending effort will be successful and that the humane objects of the law will thereby be greatly promoted, an order will be made extending as to all carriers until March 1, 1904, the time within which so much of the 9 I. C. C. REP.

amending act as relates to grab irons on the front end and sides of locomotives shall take effect.

The second class of applications relates to power driving wheel brakes on narrow gauge locomotives. The petitioners for relief in this regard are the Denver & Rio Grande and the Colorado Southern. These two companies are understood to operate the only important narrow gauge lines in the United States. Briefly, their showing is that the use of this particular appliance, if not impracticable, is unnecessary and undesirable, for the reason that on their steep and long descending grades the purpose of the law, viz., the control of a train without the use of hand brakes, is much better and more safely accomplished by another device which is described as a water brake. The proofs in these cases show that the objects of the law are fully secured, though not by the precise mechanism which the law requires. Without reciting the facts in detail it is sufficient to say that the contention of the petitioners is sustained by their evidence, and this was virtually conceded, as we understood, by the representatives of the employees who attended the hearing. In a word, the law imposes a specific requirement which in the case of narrow gauge locomotives on these lines is not compatible with the highest degree of safety. The device actually employed as a substitute for the driving-wheel power brake appears to be more effective and better suited to the conditions under which narrow gauge lines are operated, especially on long and heavy grades. In our opinion, based upon the facts disclosed, the law should be so amended as to permit the use of the device now employed by these petitioners on their narrow gauge lines. They ask for such an extension as will give them opportunity to present the matter to the Congress with a view to suitable legislation. It seems clear that this application is based upon reasonable and convincing grounds. Therefore, for the purpose of enabling this question to be acted upon at the next session of the Congress, an order will be made extending until July 1, 1904, the time within which the Denver & Rio Grande and the Colorado Southern shall comply with so much of the amendment of 1903 as relates to the use of power driving-wheel brakes on their narrow gauge locomotives used in train service, but this extension

shall not include or apply to such narrow gauge locomotives as are or may be used in switching and yard service.

The third class is the application of the Boston & Maine Railroad for an extension as to their passenger cars and locomotives used in passenger service. It appears from the proofs that this company is now engaged in changing its passenger equipment from one kind of automatic coupler to another and presumably better kind. We infer that a coupler of the Master Car Builders' type is regarded by this petitioner as necessary to full compliance with the Safety Appliance Law, as a coupler of different type has heretofore been in use. It is fairly obvious that a change of this character could not be made between the second of March and the first of September, a period covering the heavy summer passenger business of this company, without withdrawing from service so much of its passenger equipment as would prevent the accommodation of the public, and that due regard for public convenience justifies an extension under the circumstances of this case. The uncontroverted facts shown by this petitioner undoubtedly present "good cause" within the meaning of the statute, and this was understood to be admitted by the representatives of the employees. Accordingly, an order will be made extending until January 1, 1904, the time within which the Boston & Maine Railroad shall comply with so much of the amendment of 1903 as relates to automatic couplers on its passenger cars and locomotives used in passenger service, including the locomotives used in switching passenger cars and making up passenger trains.

With slight exceptions which will be hereafter noticed, all the other applications for relief are of the same general character and may be regarded as comprising the fourth class. The petitioners of this class ask an extension as to so much of the amendment of 1903 as requires that not less than fifty per cent of the cars in a train shall have their power or train brakes used and operated by the engineer of the locomotive drawing such train; and that all power-braked cars in such train which are associated together with said fifty per cent shall have their brakes so used and operated. In all these cases the same relief is sought, but the facts shown by different carriers are not equally convincing.

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ing. In one or two instances the petitioners of this class have presented definite, competent and satisfying proofs; they have established the facts on which they rely by the testimony of general officers and officials of knowledge and authority; they have furnished carefully prepared statistical data, and given the results not only of ordinary experience but also of special tests and experiments; they have shown "good cause" for a considerable extension by oral and documentary evidence which, in our opinion, fairly proves their allegations. The other petitioners of this class have produced little more than loosely drawn and general affidavits, supplemented with the arguments of counsel who concededly have no knowledge of the facts. The witnesses called by them were not always acquainted with actual conditions on the lines with which they are connected and were unable to answer with confidence and certainty questions designed to bring out pertinent information. As to some of these petitioners, therefore, the Commission is unable to determine what extensions, if any, are really necessary to permit compliance with the law without discommoding the public. For this reason the Commission is justified in granting a substantial extension in some cases, while constrained in others to limit the extension to a comparatively brief period, unless and until there is such a disclosure of facts as to warrant the allowance of additional time. What has just been said respecting this class of petitioners does not imply that the proofs regarded as insufficient are all equally wanting in definiteness and probative force. Some of them show conditions which justify a moderate extension while others leave our minds in doubt as to the needful period required. We cannot, however, undertake to apportion the time according to the showing made in each case, but deem it more appropriate to grant the same extension to all the roads whose proofs are not deemed satisfactory.

Generally speaking, all the applicants of this class claim that they are not in a condition to comply with this feature of the law without depriving the public of shipping facilities immediately and constantly required. To interrupt the movement of traffic at the present time by insisting upon full compliance with the law would result in some cases in serious inconvenience and

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loss to those who are dependent upon the prompt movement of their shipments. This is the principal ground upon which the Commission is constrained to exercise the authority invoked by the petitioners. Until substantially all cars are provided with air brakes there will be more or less difficulty in complying with this fifty per cent requirement, especially where traffic is heavy and the lines frequently in a state of congestion. This difficulty appears to us, from the facts before us, to arise in most instances not so much from the fact that cars are not equipped with air brakes as from the fact that these appliances are not kept in proper and workable condition. If all cars reported to us as provided with air brakes were in such a state of repair and efficiency as to enable the air brakes to be used, we think the fifty per cent rule could now be substantially observed, except in cases where the traffic movement may be regarded as abnormal. It is very significant in this connection that our inspectors, who are constantly engaged in noting the condition of railway equipment, have rarely found a train on any road or in any part of the country in which more than half the cars were not supplied with air brakes. But in a surprising and regrettable number of cases the air brakes were discovered to be out of order to such an extent that they could not be used. This is a state of things which should not escape criticism. The attention of railroad officials who are responsible for this neglect is urgently directed to the defective condition of safety appliances in many cases, and every effort should be made to put this particular device in working order. When this is done we are confident that much of the difficulty now experienced in observing the law will disappear.

While this is believed to be true, and notwithstanding the neglect and shortcomings of some of the petitioners, it is reasonably certain that they are not now in a condition to comply with this fifty per cent rule without inflicting upon the public a degree of hardship out of proportion to the benefits likely to result from its strict observance. In the public interest, therefore, they should be allowed additional time. On a few lines, notably some portions of the Pennsylvania System, it is fairly demonstrated that conditions will exist for a considerable period which are of such a nature as to prevent the use of air brakes on fifty

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per cent of the cars in a train, if the traffic offered is handled with needful dispatch. Where the volume of business is unusual, so that terminals and distributing yards are highly congested, the time required to so classify the cars in all cases as to put air-braked cars together, and have more than half such cars in every train, would render it practically impossible to meet the just demands of shippers. Until nearly all cars are furnished with air brakes, as has been already remarked, there will be much time lost in classifying the cars in a train with reference to their destination, which is of much importance, and at the same time have a majority of air-braked cars next to the locomotive. The large additions to rolling stock, coupled with the requirement of the law in question, have created a demand for air brake equipment which manufacturers are perhaps unable to promptly supply. This inability to procure the appliance is urged as a further reason for granting an extension, and this reason appears to be based to some extent on probable facts. However, the showing made in this regard is not very convincing because of its indefinite and unsupported character. If this were the sole reason advanced by the petitioners we should have difficulty in finding it sufficient from the proofs presented.

A few applications were made which are not included in the foregoing description. These are of minor importance and do not call for special mention. They came from local roads of short mileage and little traffic, or are confined to a small part of the equipment of the petitioning company. The reasons which have induced favorable action in these cases will be readily inferred from the nature and extent of the relief granted.

Further than this it seems unnecessary to set forth in this report a detailed statement of the facts shown or claimed to exist by the various petitioners. Our conclusions are based on the general features of the situation and a brief summary will sufficiently disclose the basis of our determination. Aside from the proofs offered by the several applicants, we have the benefit of the information furnished by our inspectors who have been instructed to observe the conditions and actual operation of trains with special reference to this fifty per cent rule. As the temporary extensions expired only three days after the last hearing,

we are obliged to exercise our best judgment upon such facts as have been brought to our attention in the manner and form above recited.

As to the period of extension in any case a further observation may be made. It must be assumed that the Congress in passing this amendment was acquainted with the conditions then existing in respect of the appliances to which the amendment relates. The legislative authority allowed an interval of about six months before its mandate should become obligatory, and this was doubtless believed to be sufficient time for railroads generally to make any needed preparation for complying with the law. The discretionary power lodged with the Commission was plainly designed to afford relief in cases which would otherwise inflict special hardship upon carriers and the public. We cannot suppose that this discretion was to take the place of the legislative decree by prolonged extension of the six months allowed by the terms of the amendment, for that would be to substitute the views of the Commission for the evident purpose of the Congress. Moreover, the law for upwards of three years has required a sufficient number of air-braked cars in every interstate train to permit its control by the engineer of the locomotive drawing the same without the use of hand brakes; and it must have been deemed feasible for most if not all roads after a comparatively short space of time to comply with the specific requirement—manifestly in aid of the original law—that in all trains fifty per cent at least of the cars should have air brakes in use. It seems clear that we are warranted in granting extensions only under such circumstances and for such length of time as were contemplated by the framers of the law and are plainly inferable from its terms. Even if we have power to do so, we should not use it to the virtual defeat of the legislative intention. It remains only to state the disposition made, and not already indicated, of the several cases in which relief has been asked.

As to so much of the amending act of March 2, 1903, as requires that not less than fifty per cent of the cars in a train shall have their power or train brakes used and operated, and that all power-braked cars in such train which are associated with said

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fifty per cent shall have their brakes so used and operated, extensions are granted as follows, viz:

To the Pennsylvania Railroad Company, operating the lines of the Pennsylvania System east of Pittsburgh, including the Cumberland Valley railroad, until July 1, 1904, except the Maryland Division and Delaware Division of the Philadelphia, Baltimore & Washington railroad, the Western Division and Middle Division of the Philadelphia & Erie railroad, the Elmira & Canandaigua Division of the Northern Central Railway, and the lines of the West Jersey & Seashore railroad, as to which excepted divisions and lines no further extension is allowed.

To the Pennsylvania Company, operating the lines of the Pennsylvania System west of Pittsburgh, including the Grand Rapids & Indiana Railway, until January 1, 1904; and to that portion of the Pittsburgh, Fort Wayne & Chicago Railway between and including Pittsburgh and Crestline, that portion of the Cleveland & Pittsburgh railroad east of and including Wells-ville, that portion of the Pittsburgh, Youngstown & Ashtabula easterly of and including Niles, and that portion of the New Castle & Beaver Valley railroad between and including Homewood and Lawrence Junction, until July 1, 1904.

To the lines of the Erie Railroad Company east of Salamanca, N. Y., including the New Jersey & New York Railroad, the New York, Susquehanna & Western railroad, and the Wilkes-barre & Eastern railroad, until January 1, 1904.

To the Lehigh Valley Railroad Company until January 1, 1904.

To the Toledo & Ohio Central Railway Company until January 1, 1904.

To the Kanawha & Michigan Railway Company until January 1, 1904.

To the Hocking Valley Railway Company until January 1, 1904.

To the Cincinnati, Hamilton & Dayton Railway Company, and the Cincinnati, Indianapolis & Western Railway Company, until January 1, 1904.

To the Zanesville & Western Railway Company until July 1, 1904.

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An extension is granted the Baltimore & Ohio Railroad Company until March 1, 1904, as to so much of the amending act of March 2, 1903, as applies to power driving-wheel brakes on the one hundred and eight (108) switching locomotives and to power brakes and automatic couplers on certain narrow-gauge cars and locomotives described in the petition of that company.

Extension of the entire amending act of March 2, 1903, until September 1, 1904, is granted to the Hartwell Railway Company and to the Albany & Northern Railway Company, two short roads wholly in the state of Georgia, and until July 1, 1904, to the Potomac, Fredericksburg & Piedmont Railroad Company.

In those cases where the extension now granted will expire on January 1, 1904, the several petitioners may apply for further hearing on or before December 1, 1903. If any such application is made a hearing will be had on such date and upon such notice as the Commission may determine.

The petitions of carriers not hereinbefore mentioned or described are severally denied.

Orders will be made in accordance with the foregoing report and decision.

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THE MAYOR AND CITY COUNCIL OF WICHITA,
KANSAS,

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE GULF, COLORADO & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY; THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY; THE TEXAS & PACIFIC RAILWAY COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE TEXAS MIDLAND RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE GALVESTON, HOUSTON & HENDERSON RAILROAD COMPANY; THE INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY.

THE KANSAS CITY BOARD OF TRADE, Intervener.

Decided October 24, 1903.

1. Where actual competition exists at the more distant point which does not obtain at the intermediate or nearer point, and where such competition has actually produced a lower rate at the more distant point which the carrier cannot control and must meet to obtain a share of the business, neither the third nor the fourth section of the Act to regulate commerce prohibits the disparity in rates at the shorter and longer distance points, provided the longer distance competitive rate is remunerative and the shorter distance point rate is reasonable. Decisions of the United States Supreme Court in *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414, 17 9 I. C. C. Rep.

Sup. Ct. Rep. 45; *Louisville & N. R. Co. v. Behlmer*, 175 U. S. 648, 44 L. ed. 309, 20 Sup. Ct. Rep. 209; *East Tennessee, V. & G. R. Co. v. Interstate Commerce Commission*, 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516; *Interstate Commerce Commission v. Louisville & N. R. Co.* 190 U. S. 273, 47 L. ed. 1047, 23 Sup. Ct. Rep. 687, cited and applied.

2. On complaint of the City of Wichita, Kansas, alleging that the rates charged by defendants for the transportation of grain in carloads from Wichita to Galveston, Texas, for export are unlawfully higher than the export rates on like traffic in force for longer distances over defendants' lines from Kansas City to Galveston, on some of which lines Wichita is an intermediate point, it appeared that competition, which does not exist at Wichita, actually controls and forces the rates from Kansas City, which are, nevertheless, remunerative to the carrier; but that the present wheat rate of 30½ cents from Wichita to Galveston is excessive as applied to wheat and other kinds of grain to the extent of two cents per 100 pounds. *Held*, That the export rates on grain from Wichita to Galveston are unreasonable and unlawful and should be reduced in accordance with the finding, but that order can be directed only against the unreasonableness of such rate and not against the adjustment of export rates as between Kansas City and Wichita to Galveston.
3. The St. Louis, Iron Mountain & Southern Railway Company would have been a proper but it is not a necessary party in this case, and while service of complaint upon the Missouri Pacific, the controlling company, may not be legal service upon the St. Louis, Iron Mountain & Southern, a subsidiary company, it does, in fact, for all practical purposes notify the latter company of this proceeding.

A. E. Helm, S. S. Ashbaugh and G. W. Adams for Complainant.

Gardner Lathrop, E. D. Kenna and Robert Dunlap for A. T. & S. F. R. Co.

M. L. Clardy, J. H. Richards and C. E. Benton for Mo. Pac. R. Co.

M. A. Low for C. R. I. & P. R. Co.

W. O. Littlefield for St. L. & S. F. R. Co.

P. J. Farrell, Special Attorney, for the Commission.

W. P. Trickett, A. F. Smith and Frank Hagerman for Kansas City Board of Trade, Intervener.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

This case is one of several brought by the City of Wichita,
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Kansas, a municipal corporation under the laws of that State, to redress certain alleged grievances in the matter of freight rates. The rates involved in this proceeding are those upon grain from Wichita to Galveston, and no question is made as to our jurisdiction over the defendants.

Four lines of railway enter the City of Wichita, the Atchison, Topeka & Santa Fe, the Chicago, Rock Island & Pacific, the Missouri Pacific, and the St. Louis & San Francisco. All these lines publish tariffs and transport grain under them from both Wichita and Kansas City to Galveston. The Santa Fe system extends the entire distance from Kansas City and Wichita to Galveston; the remaining lines connect with other railways, thus forming through routes. Most or all of these connections have been made defendants in this case and no objection is offered on the ground of parties, except by the Missouri Pacific Company. That defendant states in its answer that grain transported from Wichita to Galveston would pass over its own line and also over the St. Louis, Iron Mountain & Southern, the Texas Pacific and the International and Great Northern. The two companies last named are defendants but the St. Louis, Iron Mountain & Southern is not, and the Missouri Pacific asserts that it should be.

The Missouri Pacific and the St. Louis, Iron Mountain & Southern are operated as a part of one system. All the officers appear to be identical. If notice had in terms been served upon the Iron Mountain Company exactly the same person would have been notified as was notified in making service upon the Missouri Pacific. In any readjustment of rates which might be required the same individual who acted for the Missouri Pacific would also act for the Iron Mountain. No practical inconvenience can arise therefore from the fact that the latter road is not a formal party in this case, but it appears from the answer that there is in fact an independent organization of the two companies and it does not appear what the actual connection between them is.

As just said, the Santa Fe system extends from Kansas City through Wichita to Galveston. Grain might therefore pass through Wichita in being carried by that route from Kansas

City to Galveston; but this would not necessarily be so since there is a cutoff leaving the main line at Florence before reaching and returning to it at Winfield after passing Wichita.

It appears from the testimony that grain is actually shipped both by the way of Wichita and by the way of this cutoff, the distance being somewhat shorter by the latter route. The Rock Island system extends from Kansas City through Wichita to Fort Worth, Texas, whence it reaches Galveston over its connections. By this line grain from Kansas City to Galveston must of necessity move through Wichita. While the Missouri Pacific and the St. Louis & San Francisco systems transport grain from both Kansas City and Wichita to Galveston the movement from the former city would not be through the latter.

The short line distance from Wichita to Galveston is by the way of the Santa Fe and is 724 miles; the short line distance from Kansas City to Galveston is by the way of the St. Louis & San Francisco and is 795 miles. The distance from Wichita to Kansas City over the Santa Fe is 228 miles being a trifle less by some of the other lines.

The defendants publish both an export and a domestic rate from Kansas City and Wichita to Galveston, but the domestic rates are not directly in issue here. From Kansas City two export rates are filed, one being known as the "straight" export, and the other as the "proportional" export. The former rate is not always the same by all the lines. As will hereafter appear it is merely a paper rate which is not used in actual practice and may be disregarded in the consideration of this case. The proportional rate is the one under which grain is actually transported and must be the same by all routes. At the time of the filing of this complaint the proportional rate from Kansas City to Galveston upon all kinds of grain was fifteen cents. The rate from Wichita was 28½ cents upon wheat and 26 cents upon corn, oats, rye and barley. The complainant insists: First, That this adjustment of rates is in violation of the fourth section in that the Santa Fe and Rock Island systems transport grain for the longer distance through Wichita for a less compensation than is charged for the short haul from Wichita; and in violation of the third section in that all the defendants charge much more for carry-

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ing grain the short distance from Wichita than is charged for the longer distance from Kansas City.

Second. That the rate from Wichita to Galveston is **unreasonable** in itself and therefore in violation of the first section.

The defendants admit the discrimination against Wichita and seek to justify it by competitive conditions at Kansas City which do not exist at the complainant town. The following facts are relied upon to establish those conditions and about most of them there is no dispute.

1. When railroads were first built in that section lines reaching the Missouri river at Kansas City ended there. Lines extending west from Kansas City began there. Rates between points east and west were naturally made by adding together the rate to Kansas City and the rate from it. The same was true of other points on the Missouri river which thus became a basing line. This led to industrial and commercial development along that river, notably at Kansas City, which in turn brought about the establishment of transportation conditions which can not be now disturbed without great injustice to the existing order of things.

2. Wichita is served by four railroads; Kansas City by all these same lines and by at least eight other systems. Kansas City has several times the population and many times the elevator capacity of Wichita. It has become one of the important primary grain markets and distributing centers in this country.

3. It is not, however, so much the greater number of railroads centering at Kansas City as it is the location of these railroads with respect to that point and its traffic which has produced the low rate. No kind of business is more highly competitive here than that under consideration, and these competitive conditions can in no way be better understood than by considering the movement of grain itself.

As noted above, the first lines of railway entering Kansas City from the east terminated there; the first lines extending from Kansas City toward the west began there. Subsequently lines were extended across the Missouri river to Chicago, and from east of the Missouri river into the Kansas grain fields. Certain lines may be taken as illustrative of the general situation.

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The Santa Fe system extends from Galveston to Chicago through Kansas City. The Union Pacific reaching fields competitive with the Santa Fe terminates at Kansas City. The Wabash leads from Kansas City to Chicago, or to the eastern seaboard. The Kansas City Southern runs from Kansas City to the Gulf without touching these Kansas grain fields. Now it is manifestly for the interest of the Santa Fe to transport this grain to Chicago or to Galveston. The Union Pacific can carry it only to Kansas City. The Wabash cannot participate in its transportation unless it has been brought to Kansas City and goes from there toward the east, while the Kansas City Southern can derive no revenue from it unless it is carried to the south from Kansas City. This being so these lines have all insisted that rates should be so adjusted as to permit the movement of the traffic by any route. The rate to Chicago has usually been that to Kansas City plus the proportional rate from Kansas City to Chicago. The rate to the Gulf has been the local to Kansas City plus the proportional from Kansas City to the Gulf, although, as will be seen, the latter adjustment is not now in effect.

So long as the published rate was actually maintained this permitted the traffic to move by any line, but the situation offered great temptation to departures from the published rate. Assuming the rates to be as at the date of the hearing, wheat could be taken from Wichita directly to Chicago for 26½ cents, or it could be taken to Kansas City for 14½ cents and from there to Chicago for 12 cents. But if the grain merchant in Kansas City could obtain from the Wabash a special rate of, say 10 cents from Kansas City to Chicago, he could now ship from Wichita at the local rate to Kansas City and send the grain along to Chicago for a total charge of 24½ cents. In the same way rates could be manipulated in the movement of grain over the Kansas City Southern to the Gulf. This condition of things has led to habitual departures from the open tariff by lines leading east and south from Kansas City which have in turn brought about a reduction of the open rate itself and tended to produce at Kansas City a lower rate than would otherwise have been in effect.

4. A considerable quantity of the grain grown in Kansas is exported to foreign countries. Formerly the export movement

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was almost entirely through Atlantic ports either by rail all the way to the seaboard, or by lake and rail via Chicago and other lake ports.

When the Missouri river was first crossed the lines crossing it extended to Chicago, and it was in their interest to carry this grain to that port. Subsequently lines of railway were constructed to the Gulf ports and large sums of money were expended in the improvement of those ports, principally Galveston and New Orleans. The distance from the Kansas grain fields to the Gulf is much less than to the Atlantic seaboard. After grain has been transported seven hundred miles from Wichita to Chicago, it is still considerably farther from the ocean than when it started.

Foreign countries in which this grain is marketed can be reached either through the Gulf or by the Atlantic ports of export, and the grain will adopt that route by which the cost of transportation is the least. The struggle for this business between roads leading east and those leading south has produced in the past a low rate, at times extremely low rates from Kansas City both east and south.

5. It seems to be an accepted conclusion that export rates from these Kansas fields to New Orleans and Galveston must be the same. The Mississippi river affords a means of cheap transportation from St. Louis to New Orleans, grain being carried between these cities for from five to six cents per hundred pounds. The distance from St. Louis to Kansas City is less than 300 miles and the rate comparatively low. This forces a low rate from Kansas City to New Orleans; and also to Galveston if that port is to receive business from Kansas City.

6. Kansas City is so situated that grain can be exported from it in almost every direction. It can be sent through the Gulf ports or through the Atlantic ports by several different routes, and this enables it to collect grain to a considerable extent from all directions, though it appears from the testimony that grain frequently requires treatment in order to market it to the best advantage. Different grades can be mixed to produce the exact quality required for milling, or the good and the bad can be so combined that the combination will sell for a better price than

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could otherwise be realized. This enables Kansas City to take care of an inferior crop in certain localities to better advantage than a market less centrally located.

It is impossible to say just what effect has been produced by any one or more of the above factors, but we are clear that taken together they create a highly competitive condition as to the movement of grain at Kansas City which does not exist at Wichita; that in the past the lower rates at Kansas City have been due to this competition, and that, if left to its natural course, the same competition must continue in the future to give Kansas City substantially lower rates than the complaining town. We do not find that the carriers involved have been actuated by any improper feeling toward Wichita; they would have been glad to maintain higher rates to Kansas City if possible; those at Wichita seem to have been mainly controlled by the competitive conditions at Kansas City.

Counsel for the complainant insist that the defendants agree to maintain by all lines these rates at Wichita, and that they, in connection with other lines leading from Kansas City, agree to maintain the lower rates from the latter city so that the discrimination is a voluntary one. While there is no evidence upon which to base such a finding, we have no doubt that this claim as to the agreement is in the main correct. There is without doubt a tacit understanding between these carriers as to what the rates from Wichita shall be. Without doubt carriers leading from Kansas City have a similar understanding as to what those rates shall be. But we do not think that these defendants who serve the city of Wichita could, though they might strive never so earnestly, obtain an agreement fixing rates to the Gulf at substantially the same figures from Kansas City and Wichita. No relation of rates differing much from that now in force can be put in effect at the present time without the intervention of some authority with power to say, independently of the will of these carriers, what those rates shall be. It may be added that under existing conditions the agreement as to rates has been much better kept at Wichita than at Kansas City.

As illustrative of the extent to which these defendants discriminate against the City of Wichita, and as showing a dispo-

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sition to discriminate, as it were, the complainant refers to a group of towns in the northern part of Kansas, of which Valley Falls may be taken as an example from which the distance to Galveston is considerably greater than from Wichita while the rate is materially less and to another group in southern Kansas, of which Erie is illustrative, distant from Galveston by the line of the defendant as far as Wichita, while the rate is some seven cents less.

Valley Falls is situated upon the line of the Santa Fe, 188 miles northeast of Wichita. It is but a short distance from Leavenworth, Kansas, the rate to Leavenworth being 7 cents. Leavenworth as a Missouri river point takes the same rate to Galveston as Kansas City. Hence, wheat can be shipped from Valley Falls to Leavenworth and from there to Galveston for a total of 22 cents, and no higher rate can be maintained between Valley Falls and Galveston than 22 cents.

The reason for the low rate from the second group is somewhat different. Erie is upon the line of the Santa Fe and is also upon the direct line of the Missouri, Kansas & Texas railway between Kansas City and Galveston, about 120 miles south of the former. It is understood that the M. K. & T. railway maintains no higher rate at any point upon its line between Kansas City and Galveston than the "straight" export rate from Kansas City. This results in a rate by that line from Erie to Galveston of from 20 to 22 cents and plainly no higher rate can be applied by the Santa Fe.

The discrimination existing in favor of these two groups springs from the same competitive conditions which we have been considering.

We have seen that carriers leading from Kansas City publish what is termed a proportional rate. The meaning of this term is, as defined by the witnesses, that any grain which has already paid a transportation charge by rail into Kansas City is entitled to the benefit of this so called proportional out. Since the quantity of grain consumed at Kansas City by mills and otherwise is much greater than that brought in by other means of transportation than railroad it follows that one desiring to ship grain in any direction can produce evidence that a corresponding tonnage

has paid the railway transportation charge into that market. Grain which is shipped to Kansas City is ordinarily transferred from the car to the elevator where it may be held for a period of six months before being sent forward. The actual application of these two rules makes it possible for the grain merchant at Kansas City to bring in grain from any direction at the local rate and subsequently ship that grain out at the proportional rate. To all intents and purposes the proportional rate is a flat rate. The complainant insists that Wichita should be given the benefit of a similar proportional rate and stop over privileges like those accorded Kansas City.

At the present time grain may be shipped to Wichita at the local rate and subsequently sent on either to Galveston or New Orleans at a rate which in the aggregate equals the through rate from the point of origin to destination, and it may be stopped off at Wichita for a period of six months provided it goes forward by the same line which brought it in. This of course applies only to grain which originates at such a point that it can be routed through Wichita. Originally exactly the same practice was in vogue at Kansas City so far as the rate is concerned. Grain was shipped in at the local rate and subsequently sent out at what was known as the balance of the through rate, that being a sum which added to the local rate already paid would make the full rate from point of origin to destination. The abuses which grew up under this system were so flagrant that the practice was condemned by this commission and the carriers ordered to desist from it. Since then, and possibly in consequence of this order of the Commission, the proportional rate has been substituted. In reality the present system does not produce actual rates which differ materially from those which were formerly made from the grain fields on all sides of Kansas City by what was in effect a combination of the local rate into Kansas City and a low rate from Kansas City to destination. The proportional rate, therefore, whether it is or is not to the advantage of Kansas City as a grain market is due to the very competitive conditions to which we have already referred. Kansas City has an important advantage over Wichita in the adjustment of these rates, since it can draw grain from all directions and ship it out in all direc-

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tions, while Wichita can only ship its grain out to the Gulf ports; but this is due to the peculiar location and rail facilities of Kansas City and not to the proportional rate as such. The same preference was enjoyed when Kansas City merchants operated under the "balance of the through rate" plan which is now in effect at Wichita.

At Kansas City grain may be shipped out by any line at this proportional rate irrespective of the route by which it reached that market, while in case of Wichita the same line which brings it in insists upon carrying it out. Here again the fact that a different rule prevails at Kansas City than at Wichita is due to competitive conditions. The Santa Fe and Rock Island systems would, if possible, compel all shipments of grain by their lines to Chicago which had reached Kansas City by their lines, but manifestly no such rule would be assented to by eastern roads since it would deprive them of a large part of the grain business out of Kansas City. It is not quite apparent to us how the existence of the same privilege at Wichita would promote the handling of grain there if rates are actually maintained. The rate applied by all lines is the same and a merchant can send forward his grain by the line which brought it in at exactly the same price as he could by any other, and apparently reach with equal facility all points. It is evident that the main advantage would be his ability to bid off one carrier against another, thereby possibly obtaining a rate somewhat better than that lawfully established. This has been the practical advantage in Kansas City and to this is due very largely the better rates enjoyed by shippers at that point.

It was urged by the complainant that owing to the much greater proximity of Kansas grain fields to the Gulf its product should move in that direction and that the rate should be so adjusted as to permit this movement. We have seen that until recently lines leading south and east from Kansas City and not entering the grain fields of Kansas have insisted upon an adjustment of rates which would permit the movement of Kansas grain through Kansas City to the east or to the south. Until recently the rate from Wichita to Galveston, taking that as an example, has been equal to the sum of the rates from Wichita to Kansas

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City and Kansas City to Galveston. For the last two or three years, however, an adjustment has been in effect which makes it possible to ship directly to the Gulf ports from nearly all Kansas points at one cent per hundred pounds less than via Kansas City. Thus at the present time the rate from Wichita to Galveston is 30½ cents while that from Wichita to Kansas City is 14½ and from Kansas City to Galveston 17, a total of 31½ cents.

Witnesses both for the complainant and the defendants expressed the opinion that the effect of this differential if rates were actually maintained, would be to largely divert this grain from Kansas City and send it directly to the Gulf; and it would appear from a statement by the Santa Fe system furnished at our request that such was probably the tendency. During the year 1901, 9725 cars of wheat were shipped by that road to or through Kansas City points, while 10,255 cars were taken south-bound. During the year 1902, 3205 cars were shipped to Kansas City and 6940 south. We are not informed exactly how this statement was compiled and do not know, therefore, precisely what it may signify, but it certainly shows a considerable movement of Kansas wheat to the Gulf.

Is the rate to Galveston reasonable in itself? This question was earnestly pressed upon the Commission by the complainant and is of great importance to the City of Wichita and the entire State of Kansas, but the testimony bearing upon it is extremely unsatisfactory, as it probably must be in any similar case. Upon the one hand certain witnesses in behalf of the complainant have given an opinion that the rates are too high, but they base that opinion entirely upon a comparison with rates from Kansas City. Certain other witnesses in behalf of the defendants have stated their opinion that the rates are reasonable; but these witnesses are the traffic officials of the various railroads who made the rates; and the fact that they do not substantiate their opinion by any satisfactory reasons rather tends to weaken the presumption of reasonableness which might otherwise attach to the rate itself, than to strengthen it. We are left to determine this question as a matter of judgment upon the facts presented in this record. These facts may perhaps be thrown into three groups:

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1. What rates have in the past been applied to the transportation of this traffic by the defendants and other lines similarly situated?

2. How do these rates compare with grain rates in other localities?

3. What are the peculiar circumstances which surround this traffic bearing upon the cost of service or the reasonableness of the rate?

When this complaint was brought the rate on wheat, and that on other grain need not be considered, was $28\frac{1}{2}$ cents from Wichita to Galveston. At the present time that rate is $30\frac{1}{2}$ cents. This is the export rate, the present domestic rate being 45 cents. An examination of rates previously published shows that the first export rate was filed January 1, 1892 and was 30 cents. The following January this was advanced to 34 cents where it continued until January 1, 1897, when it was reduced to 31 cents. It remained at about this figure until July 16, 1902, when it was reduced to $25\frac{1}{2}$ cents. September 15, 1902, it was advanced to $28\frac{1}{2}$ cents and in December following to $30\frac{1}{2}$ cents, the present rate. The domestic rate is not before us and its history need not be traced further than to say generally that the first published rate was 45 cents November 10, 1888, which soon fell to about 40 cents. It was 34 cents from January 1, 1897, until December 15, 1902, when the present rate of 45 cents was put into effect. The first proportional export rate from Kansas City to Galveston was filed January 1, 1897, and was 21 cents. January 1, 1899, this was reduced to 17 cents. Beginning with the year 1900 frequent fluctuations occurred, the range being from $18\frac{1}{2}$ to 13 cents, the average probably about 15 cents. December 15 the present rate of 17 cents was put in effect.

While these have been the tariff rates they do not represent the charge actually imposed for the transportation of this grain. Competition at Kansas City has always been extremely active and the open rate has seldom been observed. Reductions from Kansas City have of necessity led to reductions from points like Wichita. There is nothing to show the extent of these concessions over a period of years, but testimony taken in the latter part of 1901 and the early part of 1902 and stipulated into this

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record shows that for some time previous to January, 1902, the actual rate had been about 3 cents below the published tariff by at least two of these defendants, and all lines must have maintained about the same rate.

2. It is difficult to find instances where the shipment of grain is analogous to that from the fields of Kansas to Galveston. The distance from Kansas City to Chicago by the short line is approximately 450 miles. Grain has been frequently carried between these cities for 6 cents per 100; the published rate during the summer of 1902 was 7 cents per 100 pounds for a time, the average was about 11. From Chicago to New York the distance is about 1000 miles. The published export rate for several summers previous to 1902 has been in the vicinity of 13½ cents, the actual rate some 3 cents lower, and grain has been carried for between 7 and 8 cents per 100 pounds. It is about 450 miles from Buffalo to New York and testimony taken by us shows that the current rate for whole seasons has been approximately 3 cents per bushel, although higher at present. These cases present highly competitive conditions, and are valuable as showing not what is a fair, but rather what is a possible rate. It should also be observed that in all these cases the actual cost of transporting the grain would be less than from Wichita to Galveston.

3. Wheat moves in large quantities from the fields of Kansas to Galveston. It is loaded without expense to the carrier, and can be conveniently assembled and hauled in solid trains over a considerable part of the entire distance. It does not appear what the average loading is but it must be to the full capacity of the equipment. The delivery at Galveston apparently involves the payment of a terminal charge of 2 cents per 100. The Santa Fe, that being the only one of the defendants extending the entire distance from Wichita to Galveston, was requested to furnish a profile of its road and a statement showing the curvature and other facts entering into the cost of operation. It appears that the ruling grade southbound from Wichita to Fort Worth, a distance of 378 miles is 53 feet to the mile. From Fort Worth south the grades are heavier, the most severe being between Cleburne and Somerville, 72 feet. The maximum curvature is found between Wichita and Purcell and is 7 degrees. South of

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Fort Worth the curvature is much less. We also asked for a statement showing the density of traffic on this part of the system and the proportion of grain to the whole tonnage, but are informed that no accurate figures of this sort can be furnished. Formerly very little loading back was obtainable and most grain cars returned empty. The testimony shows that until recently 95 per cent of those sent south over the Santa Fe loaded with grain have returned without loads. That line has now obtained entrance to lumber territory, however, and will be able to bring back more loads in the future. It appears that at the present time the Rock Island system delivers this grain to its connections at Fort Worth and only about 35 per cent of its cars return without loads. We have no definite information as to the other defendants, but since they are all heavy carriers of lumber the proportion of empties must be comparatively small.

This grain traffic is of great importance to all the defendants. Of the total traffic on the Santa Fe system its grain constituted 18.82 per cent for the year ending June 30, 1901, and 13.33 per cent for the year ending June 30, 1902. For the Rock Island the figures were 22.70 and 17.27 respectively; for the St. Louis & San Francisco 10.90 and 6.95 and for the Missouri Pacific 21.29 and 17.10. These are for the entire systems. The percentage would be much greater probably if computed for those portions of the several systems over which this traffic moves.

What conclusions should be reached upon these facts?

To say that this traffic is among the most desirable of any handled by these defendants would be to repeat what has often been stated by this Commission, and what is familiar knowledge to all persons having any acquaintance with the subject. Cars are loaded without expense to the carrier; they can be loaded to their full capacity, whatever that may be; they are collected without undue expense and are hauled as a through proposition for nearly or quite seven hundred miles often in solid train loads. The cost of delivery is not excessive. Formerly most of these cars came back empty, but today the greater part over most lines return loaded with traffic which pays a rate almost or quite equal to that charged on grain. Nothing better shows the desirable-

ness of this traffic than the rates at which it has been actually carried by railways in different parts of this country. Grain has been habitually transported between Buffalo and New York, and Chicago and New York for two mills per ton mile. It has been handled by at least two of these defendants between Kansas City and Chicago for not much, if any exceeding 2.5 mills per ton mile. The Santa Fe has published and maintained a rate of 13 cents from Kansas City to Galveston. This grain would pass through Wichita and would yield about 2.7 mills per ton mile. Testimony stipulated into this record shows that when the published rate has been 15 cents from Kansas City the actual rate has often been as low as 12 cents yielding the Santa Fe, with a distance of 950 miles, 2.5 mills, while the shortest line to Galveston would realize about 3 mills from that rate. Now the fact that other carriers have transported grain between Buffalo and New York or Chicago and New York for the rates above given tends very slightly if at all to show what would be a reasonable rate upon these lines from Southern Kansas to the Gulf. The fact that the Santa Fe and the Rock Island have carried grain from Kansas City to Chicago for $2\frac{1}{2}$ mills per ton mile does not establish that as a reasonable rate from Wichita to Galveston. Even the fact that these two lines of railway have maintained a rate of $2\frac{1}{2}$ mills per ton mile from Kansas City to Galveston under stress of severe competition does not show that this would be a fair rate from Wichita even though the distance from that point is 225 miles less and the route from there on the same in both cases; but it does have an important bearing upon the cost of that service; it does show that the expense of operating these lines from Wichita to the Gulf can not be excessive, a conclusion which would not be incompatible with data furnished by the Santa Fe Company.

When this case was heard the rate in effect upon export wheat from Wichita was $28\frac{1}{2}$ cents yielding the Santa Fe 7.9 mills per ton mile. For the year ending June 30, 1902, the average receipts per ton mile of the various defendants were, Missouri Pacific 8.84 mills, Santa Fe 9.56, St. Louis & San Francisco 9.47, Rock Island 10.34. This is the average revenue from all kinds of traffic, high class and low class, car load and less than car

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load, long haul and short haul. It will be seen that a rate of $28\frac{1}{2}$ cents yields from this most desirable of all traffic a revenue per ton mile not greatly less than that received by these defendants from all traffic. The present rate from Wichita is $30\frac{1}{2}$ cents yielding to the Santa Fe 8.56 mills per ton mile, almost as much as the Missouri Pacific derives upon the average from all its traffic and only one mill below the general average of the Santa Fe. This fact is to us strong evidence that a rate of $28\frac{1}{2}$ cents pays these defendants a sufficient return, although the deduction would be more satisfactory if the comparison could be made with the average upon those parts of the defendant systems which are directly involved rather than with the entire systems.

For statistical purposes the territory of the United States is divided into groups. The transportation of this grain is conducted in groups VIII. and IX., being about equally divided between the two. The average rate per ton mile for the year ending June 30, 1902, was, in group VIII., 9.78 mills, in group IX., 9.84 mills. The operating expenses in group VIII. were 62.01, and in group IX., 74.00 per cent. The net receipts per mile from operations were \$2401, in group VIII., and \$1441, in group IX. It will be seen that the percentage of operating expenses is unusually high, and the net income unusually small in group IX., but whether that extends to the defendants in this suit does not appear.

The net income of all these defendants has materially increased from year to year for the last 3 years. The following is a statement of the net income per mile of the defendants and of groups VIII. and IX. since and including 1897:

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NET EARNINGS PER MILE OF LINE, YEAR ENDING JUNE 30—					
	1897.	1898.	1899.	1900.	1901.
Railway companies :					
Atchison, Topeka & Santa Fe Ry.....	\$1,342 31	\$1,927 48	\$2,102 44	\$2,752 49	\$3,203 90
Chicago, Rock Island & Pacific Ry.....	1,604 22	2,173 75	2,078 51	2,268 33	2,380 33
Missouri Pacific Ry.....	744 87	1,083 18	1,034 85	1,238 50	1,651 32
St. Louis & San Francisco R. R.....	2,150 60	2,327 69	2,146 16	2,331 14	2,490 82
Statistics of Railways :					
Group VIII.....	1,268 00	1,687 00	1,632 00	1,946 00	2,332 00
Group IX.....	1,082 00	1,253 00	1,399 00	1,230 00	1,801 00
United States	2,016 00	2,325 00	2,435 00	2,729 00	2,854 00
					2,547 81
					\$3,624 92
					2,761 89
					1,539 28
					2,401 00
					1,441 00
					8,048 00

We have seen that while the published rate in recent years has been approximately the same as it now is from these points, the actual rate has been materially less; it is safe to say from 2 to 3 cents less. In remarking above that an abnormally low rate temporarily induced by unusual competition ought not to be made the test of reasonableness, it was not meant that the presence of competition deprived a rate of its value as such standard. Upon the contrary it is evident that a noncompetitive rate can have no such value. The idea of our legislation in the past has been to secure competition in the expectation that from this would result a reasonable transportation charge. One test of a reasonable rate is to inquire what has been the result of competition between different carriers; when several different lines of railway could and did bid for the same traffic at what price have these carriers transported that traffic. Where such competitive conditions, operating through several years, have settled down into a certain rate we think that fact is of great weight. Now in the case before us competition after being subjected to all the restrictions then possible, resulted in an actual rate from Wichita not exceeding 28½ cents on the average. While not conclusive this is certainly important in attempting to determine what is a reasonable charge.

In view of these facts, the actual cost of moving this traffic as evidenced by the operations of these defendants over the very lines in question, the high rate per ton mile which is received in comparison with the average rate of these defendants and the territory in which the service is rendered, the fact that not more, and probably less than 28½ cents has been the actual rate from Wichita in recent years, the steadily increasing net returns of these defendants under past rates lead us to the conclusion that 28½ cents per hundred pounds for the transportation of wheat from Wichita to Galveston for export is all that these defendants should charge and that anything in excess of that is unjust and unreasonable.

In arriving at this decision it is probable that we have been more or less guided by our general knowledge of railway conditions, of rates and the relation of rates. What is a reasonable

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rate in a case like the present cannot be determined by the application of any exact rule; it is a question of judgment.

The record upon which this holding is made is, as already said, unsatisfactory. We have no information as to the gross receipts, as to the cost of construction or operation, or as to the net returns from operation of those particular portions of the defendant systems involved in this controversy, nor do we know the amount of traffic upon those lines which would be affected by these rates. We requested the Santa Fe company, that being the only one extending the entire distance from Wichita to Galveston, to furnish us with a statement showing the density of the traffic over this portion of its system and the percentage of its grain tonnage to the whole. We were informed that it was impossible to furnish an accurate statement as to the gross receipts and were given simply the percentage of grain to other traffic upon the entire system. As already remarked, that percentage must be much greater upon that portion of its system over which this traffic is carried. If we had this information we could reach a conclusion with more confidence, but we do not think that we should decline to express an opinion upon the case before us simply because there may be abnormal conditions which would alter that opinion. These facts are in the possession of the defendants alone and they should have introduced them upon the hearing if they desired to have them considered. If they wish to afford the Commission that information now we should be disposed to reopen this case and afford them an opportunity.

Broadly speaking, railways are entitled to impose rates which will maintain their properties in condition to properly discharge the functions which they undertake and yield a fair return to their owners. In consideration of the fact that the public has permitted, and in some sense induced these companies to undertake this quasi public duty, instead of discharging it itself, we are inclined to think that where serious doubt exists, the railway should be given the benefit of that doubt. But this does not mean that railway charges are subject to no revision, nor that they can never be reduced except upon an absolute certainty. These grain rates are of great importance to these defendants and they are of exactly the same importance to those who pay

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them. The testimony in this case shows that in the year 1901 seventy million bushels of wheat were grown within a radius of one hundred miles of the City of Wichita. Two cents per hundred upon this quantity would be equivalent to \$840,000. A difference of two cents in the rate under which this wheat moves to market adds to or subtracts from the net revenues of the railroads transporting it by that amount, and it affects the net revenues of the farmers who raise or the people who consume that wheat by exactly the same amount.

Claim is made upon both sides that the cost of transportation has changed. It is said on behalf of the complainant that loads are heavier, motive power more efficient, the roadbed in better condition, and that the amount of traffic has largely increased. Upon the other hand the defendants insist that the cost of labor and of all supplies which enter into the operation of a railroad have materially advanced. Both these contentions are true and what the effect of such new conditions may prove to be upon railway revenues can only be determined by the actual result. This question is not presented to us directly by this record but it does appear that up to the present time the net revenues of railways in this territory, and of the several defendants in this case, have increased.

Assuming, however, that these defendants do require larger gross revenues the conclusion to which we have come permits them to obtain such increase from their grain traffic. Our decision does not require a reduction in the present 17 cent proportional rate from Kansas City, but the testimony indicates, and it is perhaps true, that a 28½ cent rate at Wichita would force something lower than 17 cents at Kansas City; upon the present relation that rate would be 15 cents. This is distinctly higher at Kansas City and not lower at Wichita than the actual rate received for some years. These defendants at those rates would obtain a larger revenue from a corresponding tonnage than they have received in any of the last 4 or 5 years. If the people of Kansas pay for the transportation of their grain to market upon the basis of our decision they will pay more than in recent years for the same service. If at the present time our order involved

an actual reduction in the revenues of these companies we might hesitate to make it.

Our holding applies to export traffic only. Domestic grain is handled under somewhat different conditions and possibly at a somewhat greater expense. That rate is not before us and no opinion is expressed in reference to it.

There is still another feature of this case which perhaps should be referred to. The rate from Wichita to Galveston is apparently determined by the local from Wichita to Kansas City; that is, the rate can not be higher than the proportional from Kansas City to Galveston plus this local; at the present time it is one cent less than that combination. If therefore this local rate should be reduced more than one cent it would work a necessary reduction of the Wichita-Galveston rate. That local is now 14½ cents for a haul of 225 miles. It has at times in the past been as low as 12 cents. The reasonableness of this rate has not, however, been questioned by the complainant. It appears to be in line with similar rates to the Missouri river, and we express no opinion in this case touching its reasonableness.

CONCLUSIONS.

Do the Santa Fe and Rock Island systems violate the fourth section in charging a lower rate from Kansas City than from Wichita, an intermediate point? Do all the defendants violate the third section in making a less charge from Kansas City than from Wichita, the distance from the latter being much less than from the former point?

The Supreme Court of the United States has several times considered the application of these two sections. *Interstate Commerce Commission v. Alabama Midland R. Co.*, 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45; *Louisville & N. R. Co. v. Behlmer*, 175 U. S. 648, 44 L. ed. 309, 20 Sup. Ct. Rep. 209; *East Tennessee, V. & G. R. Co. v. Interstate Commerce Commission*, 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516; *Interstate Commerce Commission v. Louisville & N. R. Co.*, 190 U. S. 273, 47 L. ed. 1047, 23 Sup. Ct. Rep. 687.

These decisions need not be examined in detail. The court clearly holds that where actual competition exists at the more

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distant point which does not obtain at the intermediate or nearer point and where such competition has actually produced at the more distant point the low rate which the carrier cannot control and must meet to obtain a share of the business, these sections do not, in a case like that before us, prohibit the disparity in rates, so long as the low competitive rate is remunerative to the carrier and the noncompetitive rate a reasonable one in itself. In the case last above cited this was held to be so even though the competitive rate was not unreasonably low. It has been found in this case that competitive conditions do actually exist at Kansas City which do not exist at Wichita, and that these conditions have actually produced the low rate from Kansas City. We think that rate is remunerative. We have found that the present rate from Wichita is somewhat too high, but if that be reduced in accordance with our finding it is difficult to see how these defendants can be said to be in violation of the third and fourth sections of the act. If not reduced, it appears to us that our order should be directed against the unreasonableness of the Wichita rate and not against the adjustment of rates.

The fact that Valley Falls and the group of towns it represents are given better rates than the complainant adds nothing to the case, for they are controlled by the Missouri river competitive rate. This was expressly so held by the Supreme Court in the La Grange Case, *supra*, where it was said that more distant points than La Grange might be given a lower rate since that rate was forced by the Atlanta competitive rate. The competition at Erie is of a somewhat different character but is manifestly controlling. The defendants cannot impose higher rates from these towns than are named by the Missouri, Kansas & Texas.

It is by no means clear that the proportional rate gives Kansas City any advantage over what that market would enjoy under the scheme which was formerly in effect there and which is now in vogue at Wichita; but if it does, that too has been the outgrowth of these same competitive influences. So also has the privilege of sending grain forward by some other line than the one bringing it in. If these defendants voluntarily granted that privilege at Kansas City they would be compelled to accord it also at

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Wichita; but if competition has forced that condition at Kansas City they are not under the ruling of the Supreme Court, obliged to establish the same privilege at Wichita where that competition does not exist.

The Commission did not at first take that view of the third and fourth sections which has been finally adopted by the court, but its holding is of course conclusive upon us and we must apply the law as interpreted. If it be not adequate to the proper correction of these transportation abuses the remedy lies in an amendment of the act itself.

It has been found as a fact that any charge in excess of 28½ cents per 100 pounds for the transportation of grain from Wichita to Galveston is unreasonable, and an order will be issued directing that the defendants cease and desist from maintaining the present rate of 30½ cents. Rates upon other grain have usually been somewhat lower than upon wheat. No distinction has been attempted in this case since there is no very good ground for compelling such difference unless the carriers see fit to make it voluntarily.

The failure to make service upon the St. Louis, Iron Mountain & Southern Railway Company affords no reason against the making of this order. While that company is a proper party it is not a necessary party, and still further while service upon the Missouri Pacific Company may not have amounted to legal service upon the Iron Mountain Company, had that been required, it does in fact for all practical purposes notify the latter company of this proceeding.

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THE MAYOR AND CITY COUNCIL OF WICHITA,
KANSAS,

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY; THE ST. LOUIS & SAN FRANCISCO
RAILROAD COMPANY; THE MISSOURI PACIFIC
RAILWAY COMPANY; THE MISSOURI, KANSAS &
TEXAS RAILWAY COMPANY, AND THE CHICAGO
ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Decided October 24, 1903.

On complaint by the City of Wichita, Kansas, alleging that defendants' rates on coal in carloads from Minden, Mo., McAlester, I. T., and Russellville, Ark., to Wichita are unlawful as compared with defendants' coal rates from the same points to Kansas City, it appeared that the rates to Kansas City are controlled and actually forced by competitive conditions governing the transportation of coal to that city, but that such rates are remunerative and that the rates to Wichita cannot be found excessive upon the record as made in this case; *Held*, That the complaint should be dismissed without prejudice. *Mayor and City Council of Wichita v. A. T. & S. F. Ry. Co., et al.*, 9 I. C. C. Rep. 534, cited and applied.

A. E. Helm, S. S. Ashbaugh and G. W. Adams for complainant.

Gardner Lathrop, E. D. Kenna and Robert Dunlap for A. T. & S. F. R. Co.

M. L. Clardy, J. H. Richards and C. E. Benton for Mo. Pac. R. Co.

M. A. Low for C. R. I. & P. R. Co.

W. O. Littlefield for St. L. & S. F. R. Co.

James Hagerman and J. M. Bryson for M. K. & T. R. Co.

P. J. Farrell, Special Attorney, for the Commission.

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REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

This complaint puts in issue the justness of certain coal rates to Wichita. The points named in the complaint are Minden, Mo., McAlester, I. T., and Russellville, Ark., and the allegation is that the rates from these points to Wichita are unreasonable under the first section and that they unduly discriminate in favor of Kansas City and St. Joe in violation of the third section.

The defendants admit our jurisdiction of them and the traffic involved. Those facts of general application which have been already found in the case between these same parties touching grain rates, are referred to as a part of this report, but need not be repeated.

The facts peculiar to this proceeding may be best stated by considering separately these different points of production.

Minden. The places named in the complaint are not those from which Wichita actually buys its coal supply but are illustrative of the points of production. The district in which Minden is situated is commonly known as the Pittsburg district and embraces various coal fields within a radius of perhaps 25 miles, the principal ones being at Pittsburg, Weir City and Centreville. These last named places are located in the State of Kansas and this Commission would have no jurisdiction over rates between such points and Wichita. Minden is situated in the State of Missouri and transportation from its mines to Wichita is therefore interstate commerce. It seems to be considered that rates from all points in this district to Wichita must be the same and that the effect of a reduction from Minden would be to reduce the state rates from other points in the district.

The coal obtained from this district is a soft bituminous one of fair quality. It retails in Wichita for from \$3.75 to \$4.50 per ton. It is the cheapest in price and the poorest in quality of any coal used in Wichita and is more extensively used than any other coal. It was estimated that 60 per cent of all coal consumed in the complainant city came from this district. The principal

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steam fuel used in Wichita seems to be slack from these Pittsburg mines.

The Santa Fe, the Missouri Pacific and the St. Louis & San Francisco Railways operate lines from this district to both Kansas City and Wichita. The Rock Island has no line from this district to either Kansas City or Wichita and as we understand the testimony does not transport coal from these mines to either of those points. The Kansas City Southern also carries coal from this district to Kansas City but not to Wichita.

The short line distance from Minden to Wichita is 178 miles, to Kansas City 129 miles, and is in both cases by the St. Louis & San Francisco. The rate by all lines is the same, being, to Kansas City on both lump coal and slack 80 cents, to Wichita \$1.50 on lump coal, \$1.25 on slack. At the time of the filing of this complaint the rates to Wichita were \$1.60 on lump coal and \$1.40 upon slack, the reduction having been made a short time before the hearing at Wichita. The rate to Kansas City was 70 cents at the date of hearing, having been advanced. All rates given are per ton of 2000 pounds.

The testimony showed that the cost of mining coal in this district was from \$1.00 to \$1.25 per ton but the evidence upon this point was indefinite and can not be relied upon as establishing that fact. Just previous to the hearing the price at the mine had been advanced from \$1.75 per ton to \$2.00.

McAlester. The mines in the vicinity of this place and designated by this name in this hearing produce a better grade of soft coal than is obtained from the Pittsburg district. It is freer burning and contains fewer impurities than the Pittsburg coal. For these reasons it is preferred for domestic use and commands a higher price for that purpose from those who can afford to pay it. It retails in Wichita for about \$6.00 per ton, from \$1.50 to \$2.00 above the Pittsburg article.

These mines are situated upon the Missouri, Kansas & Texas Railway, and also upon the Choctaw, Oklahoma & Gulf known commonly as the Choctaw road. None of the lines entering Wichita reach these mines with their own rails but all of them carry to Wichita in connection with one or the other of the roads

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above mentioned, and all of them, except the Rock Island, carry this coal to Kansas City.

It appears from the testimony that the Missouri Pacific, St. Louis & San Francisco, and Santa Fe receive this coal from the M. K. & T., while the Rock Island receives it from the Choctaw. The main line of the M. K. & T. extends from these fields directly to Kansas City; and the Kansas City Southern and its connections also carry this coal to Kansas City.

The short line distances from these fields are, to Kansas City 314 miles via the M. K. & T., to Wichita 308 miles by the same line in connection with the St. Louis & San Francisco. The rates are the same by all lines and are now, to Wichita on lump coal and slack \$2.60, to Kansas City \$2.00 on lump coal and \$1.50 on slack. At the time of the filing of this complaint the rate to Kansas City was \$1.75 the advance to the present rate having been made October 25, 1902.

Russellville. The coal produced at these mines differs essentially from that obtained in the two districts already referred to, being in the nature of an anthracite coal and selling in competition with Pennsylvania anthracite. The testimony did not show definitely the price at which this coal retails in Wichita. It appeared however that consumers generally prefer the eastern coal to this article, and that it had never come into very general use. There was no evidence tending to show the cost of production either in the McAlester or Russellville districts, or the retail price of the last-named variety at Kansas City.

Most if not all the defendants by their connections carry coal to Wichita from Russellville and also to Kansas City. It further appears that the Kansas City Southern and the M. K. & T. transport coal from Russellville to Kansas City. The short line distances from Russellville are to Wichita 421 miles, to Kansas City 451 miles, both via the Missouri Pacific. The present rates, which are the same by all lines, are, to Wichita \$2.80 on lump and slack, and \$2.55 on pea, to Kansas City \$2.10 on lump coal and \$1.35 on slack. At the time of the filing of the complaint the rate on slack to Kansas City was \$1.50, the reduction to the present basis having been made August 10, 1902.

The distances above given are those by the shortest line over
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which the traffic actually moves. The mileage by most lines both to Wichita and Kansas City is greater, but it does not seem necessary to state the exact distance by each road. An examination of these rates and distances shows that Wichita is somewhat farther from Pittsburg district than Kansas City, while the rate is 80 cents to Kansas City as compared with \$1.50 to Wichita; that Wichita and Kansas City are substantially equidistant from the McAlester district while Kansas City enjoys a rate of \$2.00 per ton as against \$2.60 to Wichita; that from Russellville the distance to Wichita is distinctly shorter than to Kansas City, while the rate is one-third higher. The complainant insists that when these railroads carry coal to Kansas City upon these rates they discriminate in favor of that locality as against Wichita and points similarly situated. The reply of the defense is that, while these rates may constitute a discrimination, that preference is not undue, but is rendered necessary by competitive conditions at Kansas City. The facts touching this branch of the case comprehensively stated are as follows.

The nearest coal fields to Wichita are those of the Pittsburg district. Kansas City upon the other hand is situated in the midst of coal fields. Mines are located upon all sides of it at various distances, the nearest being not more than 25 to 30 miles away. Almost every railroad leading into Kansas City reaches one or more of these nearby mines. The Santa Fe brings coal from Camden 37 miles, Richmond 47 miles, Lexington 53 miles. The Chicago & Alton finds it at a distance of 50 miles. Other lines reach coal mines at about the same haul. The Missouri Pacific, the Kansas City Southern, and the St. Louis & San Francisco all penetrate the Rich Hill district, distant about 80 miles.

Rates from these nearby points have in several cases been fixed by law. The Railroad Commission of Kansas established a rate of 50 cents from Leavenworth to Kansas City. The State of Missouri, either by statute or by its commission, has fixed the rate from Richmond at 50 cents and from Lexington at 55 cents. It was the opinion of Mr. Lincoln that the State of Missouri had also established the rate from the Rich Hill district at 70 cents. The fixing by law of these short-distance rates necessitates the

application of substantially the same rate from other nearby mines and the testimony showed and we find that the rate of 80 cents from the Pittsburg district has been rendered necessary by competitive conditions from nearer sources of supply.

Most of the testimony was directed to rates from this district, but it fairly appears that the rates from McAlester and from Russellville to Kansas City are influenced by these same competitive conditions. The Pittsburg coal is of the same general quality, is used for the same purposes and sells for about the same price in Kansas City as coal from the Rich Hill and other nearer mines. The McAlester coal is of a better grade and sells for a higher price but the price at which the poor article can be obtained necessarily exerts a controlling influence upon the price at which the better article can be sold. The Russellville coal comes into competition with this nearby coal in a more indirect fashion, but there is still a competition. While the testimony does not show it, it is probable that this coal competes with the anthracite coal from eastern points. This latter coal can reach Kansas City at a less price than Wichita and this would require a lower rate from Russellville to Kansas City than to Wichita. This fact did not however appear in the testimony and ought not perhaps to be assumed in the disposition of this case.

The quantity of coal used in Kansas City is very much greater than that consumed at Wichita. It was said in testimony that Wichita annually took from 3300 to 3700 cars. The traffic manager of the Santa Fe testified that his line handled coal from the Pittsburg district to Kansas City mainly in train loads, and that the amount which it distributed over the whole State of Kansas was less than it carried to or through Kansas City.

Complainant introduced testimony showing that the higher price of coal at Wichita prevented the location of industries at that point which would otherwise come there. While the testimony does not conclusively show this there can be no doubt of the fact. Neither testimony nor argument is required to demonstrate that any industry making a considerable use of coal would establish itself at Kansas City in preference to Wichita

unless other conditions outweighed the advantage in the price of that commodity possessed by Kansas City.

We are constrained to find the low rates at Kansas City from the points in controversy have been induced, without any malice towards Wichita, by competitive conditions at Kansas City which do not exist at Wichita; that coal could not, under present conditions, move from the points in question at much, if any higher rates, and that this is largely due to the natural advantages enjoyed by Kansas City in obtaining its coal supply.

We have not referred to St. Joseph, since neither party seemed to regard the conditions there as materially different from those at Kansas City, and such is our general information.

The complainants also insist that these coal rates are unreasonable and therefore in violation of the first section of the act. The testimony upon that point is extremely unsatisfactory upon both sides. The only witness in behalf of the complainants upon this point was a coal dealer of Wichita who testified touching general conditions existing there and who also said that in his opinion the rates from the mines to Wichita were unreasonable. He stated however that he had no knowledge of the cost of operation, of the different railroads or in general of the conditions under which this traffic was transported, and that his opinion as to the reasonableness of the rates to Wichita was based entirely upon a comparison with those to Kansas City. If the carriers could transport coal from the Pittsburg district to Kansas City for 70 cents per ton, in his opinion \$1.50 to Wichita was excessive. It is evident that such an opinion adds nothing to the value of the comparison itself. Upon the part of the defendants the traffic manager of the Santa Fe and the general freight agent of the Missouri Pacific testified that in their opinion these rates were reasonable. They themselves had made the rates. Their expression of opinion under oath adds little or nothing to the presumption raised by the rate itself. If the reasonableness of railway rates is to be established by the opinion of traffic men who have made the rates, or who have made similar rates, without reference to the reasons upon which that opinion is based, clearly few if any rates can ever be found too high. Such testimony as that given in this case satisfies us of the good faith of

the traffic manager in making the rate, but we do not think it ought to have much weight in establishing the reasonableness of that rate, unless some reason is given upon which that opinion is based.

We are left therefore in this case as in the grain case between these same parties to determine the justness of these rates by a consideration of the circumstances surrounding this traffic. It must be a question of good judgment in view of all the facts before us.

The complainant insists that the rate to Kansas City should be taken as a test of the reasonableness of that to Wichita. This can hardly be so. We have found that the rate to Kansas City is forced by competitive conditions which do not exist at Wichita. That rate is accepted because no better one can be obtained. At the same time it is proper to consider this rate for it must be assumed that it yields a profit to the carrier. The short line distance from Minden to Kansas City is 129 miles. A rate of 70 cents per ton to Kansas City (that was in effect at the date of hearing) yields a return of 5.4 mills per ton mile. While this rate is low as compared with other rates upon the lines of railway making it is not an extremely low rate for the transportation of coal and we have no doubt that this business is highly profitable to the carrier engaging in it. The testimony shows that upon the Santa Fe system, and the same is doubtless true of other lines, this traffic is moved entirely at the convenience of the carrier. It goes largely in train loads but may be taken in carloads when desirable. The haul is of considerable length. The traffic is loaded and unloaded without expense to the carrier although it is probable that the terminal cost at Kansas City may be considerable. There are great railway systems in the United States whose entire traffic, including high class as well as low class, that carried in less than carloads as well as carloads, yields a per ton mile revenue less than that produced by this coal rate, and which have nevertheless shown a fair net income over the cost of operation. The average per ton mile received by all the railroads in Group III. for the year ending June 30, 1900, was but slightly above this and the operating expenses of that Group averaged less than 70 per cent.

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The short line distance from Minden to Wichita is 178 miles from the Pittsburg district it is perhaps somewhat less. A rate of \$1.50 per ton for this distance yields a revenue of approximately 8.5 mills per ton mile. This we regard as a high rate for the transportation of coal. Few commodities should take a lower rate than this. There is scarcely any commodity in case of which the actual cost of transportation is less. While the cars are very largely sent back empty, the traffic is moved entirely in carloads and generally in very considerable quantities. The cars are invariably loaded to their full capacity which is generally large. The expense of originating and delivering the traffic is small. The nature of the traffic itself is such that it ought to be given a low rate in the distribution of the transportation tax. There is almost no commodity in whose total cost the item of transportation is so great as coal. It is an article of universal necessity and the cost of transportation rests more heavily and more directly upon the consumer than with most commodities. Yet when we compare this rate of \$1.50 from the Pittsburg district to Wichita with the other rates of the defendant carriers we find that it is almost equal to the average derived from their entire tonnage. In the year 1902 the average rate per ton mile of the Santa Fe system was 9.26; of the Missouri Pacific 8.84; of the St. Louis & San Francisco 9.47 mills.

A comparison with coal rates in other sections of the country may be instructive. The Commission has recently heard a complaint putting in issue the reasonableness of rates upon anthracite coal from the mines to the seaboard in which a somewhat elaborate statement was prepared showing the rates charged for the transportation of anthracite coal and also for the carriage of bituminous coal produced in the mines of West Virginia, Pennsylvania and Maryland. These rates differ so greatly that a generalization is of much value. Speaking broadly and taking Washington as a point of consumption it may be said that the sources of anthracite supply are distant upon the average of some 230 miles and that the rate charged is \$2.00 per ton of 22 pounds, equivalent to about 8.7 mills per ton mile. The sources of its bituminous supply are found at distances varying from 150 to 400 miles, the rate being in no case lower than \$1.60 a

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in no case higher than \$1.70 per gross ton, yielding an average revenue per ton mile of approximately 6 mills. The average rate per ton mile received from the transportation of anthracite to Buffalo, an important lake shipping point, is approximately 6 mills and for bituminous about 5.5 mills. To Chicago anthracite pays about 4.4 mills for a haul of 800 miles and bituminous 3.5 for a haul of 540 miles.

The average rate per ton mile received upon all parts of a great system like the Santa Fe, for example, is no fair criterion of a just rate over a few hundred miles of that system. The fact that coal is carried to competitive points, like some of these above referred to, at a low rate per ton mile, does not establish that these defendants ought to put in a similar rate between Wichita and Minden. But we think it does show, in connection with the well known facts as to the actual cost of carrying this commodity, that a rate of 8.5 mills per ton mile for the carriage of coal a distance of nearly 200 miles is a high one, unless there are circumstances which render the imposition of an extraordinary rate proper. No such conditions are shown to exist in this case. The statement of the Santa Fe, and the testimony of its traffic manager, both show that grades and curvatures are not excessive and that the cost of operation is not unusual. The St. Louis & San Francisco Company has transported large quantities of coal from this Pittsburg district to Wichita for the Rock Island Co. receiving for this service 85 cents a ton, which reasonably demonstrates that the cost of service cannot be excessive. We have been furnished with no statement as to the density of the traffic upon this part of the various systems involved which would be an important item of information.

Upon the foregoing considerations we are strongly impressed that the present rate of \$1.50 per ton from the Pittsburg district to Wichita is too high. We feel that 8 mills per ton mile, \$1.40 per ton, is enough for the transportation of a coal of this quality for that distance under the circumstances of this case. At the same time the rate in effect cannot be regarded as an extravagant one; while coal rates, and rates generally, have been advanced recently this rate has been reduced; the railways are earnestly insisting that they need additional revenue to meet increased oper-

ating expenses, and on the whole at this time we hesitate to order a further reduction. Rates from the other sources of supply involved can hardly be considered excessive if this is not.

CONCLUSIONS.

In analogy to the case between these same parties touching grain rates, which has just been decided, it must be held that the preference given Kansas City in making these lower rates on coal is not in violation of the third section, inasmuch as it is induced by competitive conditions at that point which do not obtain at Wichita. It may be further noticed that there is an element in this case which is not found in the other. Kansas City obtains its low coal rates primarily because of its natural location. It is not because the managers of sundry railroads have agreed that they will compete at Kansas City and not at Wichita that the former locality has cheaper coal than the latter, but rather because coal deposits are plentiful at its very doors. Wichita, distant 170 miles from its nearest coal field, ought not to expect as cheap fuel as Kansas City where coal is plentiful at from 30 to 50 miles. It is possible that this natural advantage has been unduly intensified by railway competition but clearly it exists and justifies a lower rate than is accorded the complainant.

Final order will not be entered at this time and complainant will have until January 1, 1904, to apply for leave to submit further testimony upon the reasonableness of the coal rates to Wichita.

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THE MAYOR AND CITY COUNCIL OF WICHITA,
KANSAS.

v.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE GULF, COLORADO & SANTA FE RAILWAY COMPANY; THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE ANGELINA & NECHES RIVER RAILROAD COMPANY; THE ARKANSAS & CHOCTAW RAILWAY COMPANY; THE LOUISIANA & ARKANSAS RAILROAD COMPANY; THE ARKANSAS MIDLAND RAILROAD COMPANY; THE AVOYELLES RAILROAD COMPANY; THE CENTRAL TEXAS & NORTH-WESTERN RAILWAY COMPANY; THE EMPORIA & GULF RAILROAD COMPANY; THE FORT WORTH & NEW ORLEANS RAILWAY COMPANY; THE GULF & INTERSTATE RAILWAY OF TEXAS AND JOS. P. O'DONNELL, RECEIVER THEREOF; THE GULF, BEAUMONT & KANSAS CITY RAILWAY COMPANY; THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY; THE HOUSTON & SHREVEPORT RAILROAD COMPANY; THE HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY; THE INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY; THE KANSAS CITY, WATKINS & GULF RAILWAY COMPANY AND HENRY B. KANE RECEIVER THEREOF; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; THE LOUISIANA & ARKANSAS RAILROAD COMPANY; THE LOUISIANA

& NORTHWESTERN RAILROAD COMPANY; THE MARSHALL, TIMPSON & SABINE PASS RAILWAY COMPANY; THE MINDEN RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE MOSCOW, CAMDEN & SAN AGUSTINE RAILWAY COMPANY; THE NATCHITOCHIE & RED RIVER VALLEY RAILWAY COMPANY; THE NEW ORLEANS & NORTHWESTERN RAILWAY COMPANY AND C. E. RATCLIFF, RECEIVERS THEREOF; THE PINE BLUFF & WESTERN RAILWAY COMPANY; THE SABINE & EAST TEXAS RAILWAY COMPANY; THE SHERMAN, SHREVEPORT & SOUTHERN RAILWAY COMPANY; THE SHREVEPORT & RED RIVER VALLEY RAILWAY COMPANY; THE SIBLEY, LAKE BISTENEAU SOUTHERN RAILWAY COMPANY; THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY (TEXAS); THE SOUTHERN PACIFIC COMPANY; THE TEXAS & NEW ORLEANS RAILROAD COMPANY; THE TEXAS & LOUISIANA RAILWAY COMPANY; THE TEXAS & PACIFIC RAILWAY COMPANY; THE TEXAS SOUTHEASTERN RAILROAD COMPANY; THE TEXAS SOUTHERN RAILWAY COMPANY; THE TEXARKANA & FORT SMITH RAILWAY COMPANY; THE TEXARKANA SHREVEPORT & NATCHEZ RAILWAY COMPANY; THE TEXAS, SABINE VALLEY & NORTHWESTERN RAILWAY COMPANY; THE TRINITY VALLEY SOUTHERN RAILWAY COMPANY; THE VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY; THE WARREN & CORSICANA PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS TEXAS RAILWAY COMPANY.

Decided October 24, 1903.

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On complaint of the City of Wichita, Kansas, alleging that rates from lumber shipping points west of the Mississippi River in Louisiana, Arkansas and Texas to Wichita are unreasonable and unduly prejudicial as compared with rates on like traffic from the same points to Kansas City, Mo., Omaha and Lincoln, Neb., and Topeka, Kans., and that such rates are higher via the lines of the defendants, the Santa Fe and Rock Island Systems, for the shorter distance to Wichita than for the longer distance through Wichita to Kansas City and the other destination points mentioned, it appeared that competitive conditions existing in Kansas City, Omaha, and Lincoln produce low rates to those points from the lumber territory in question and that such competitive conditions do not exist at Wichita; that there is no substantial dissimilarity in the circumstances and conditions governing the transportation of lumber from such territory to Wichita and through Wichita to Topeka by the Santa Fe and Rock Island Systems; that the rate from such lumber producing territory to Wichita is excessive to the extent of one cent per 100 pounds. *Held*, That for the reasons set forth in *Wichita v. A. T. & S. F. R. Co.*, 9 I. C. C. Rep. 534, based upon decisions of the United States Supreme Court there cited, the defendants' lumber rates to Wichita as compared with those in effect to Kansas City, Omaha and Lincoln from the lumber shipping territory herein involved are not in violation of the third and fourth sections of the Act to regulate commerce; that all of the defendants do violate section three of the Act; that the Santa Fe and Rock Island Systems violate section four by maintaining higher lumber rates from such territory to Wichita than to Topeka; and that the lumber rate from the territory described to Wichita is unreasonable and should be reduced.

A. E. Helm, S. S. Ashbaugh and G. W. Adams for complainant.

Gardner Lathrop, E. D. Kenna and Robert Dunlap for A. T. & S. F. R. Co.

M. L. Clardy, J. H. Richards and C. E. Benton for Mo. Pac. R. Co.

M. A. Low for C. R. I. & P. R. Co.

W. O. Littlefield for St. L. & S. F. R. Co.

P. J. Farrell, Special Attorney, for the Commission.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

The rates put in issue by this complaint are those on lumber
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from southern territory west of the Mississippi River to Wichita, Kansas. That city is the complainant and the various lines of railroad engaged in the transportation of this lumber are the defendants.

The case was heard with several others between the same complainant and substantially the same defendants, and it was agreed that the testimony might be used in the various cases in so far as it was applicable. Two of these cases, involving rates on grain and coal, immediately precede this, and the general facts stated in the reports of those cases touching the competency of the complainant and the transportation and commercial conditions surrounding Wichita and Kansas City may be referred to as a part of this opinion.

The four railroad lines which enter Wichita all participate in the transportation of this lumber traffic. The other defendants are mainly short roads situated in the district where the lumber originates, known commonly as tap roads, used, sometimes to bring the logs to the railway where they are sawed, and sometimes to transport the lumber itself to a connection with the main line. Many of them have filed disclaimers of any interest in this suit for the reason that they have no voice in the making of the rates involved but are obliged to take whatever the principal carriers see fit to accord them. It seems unnecessary to enter into any consideration of the objections of these defendants. The traffic is interstate and the carriers who make and publish these rates, and who transport this lumber to Wichita make no question but that they are subject to the jurisdiction of the Act to regulate commerce.

The claim of the complainant will be best understood by a statement of the rates themselves with the distances from certain illustrative points in the territory in question. Three general districts are involved, which may be known as the Arkansas, Texas and Louisiana districts respectively. Complainant names Camden as illustrative of Arkansas, Trinity of Texas, and Plaquemine of Louisiana points and the defendants have made no question that these localities have been fairly selected. The rates from all this territory are the same to the cities named by the complainant and are as follows:

To Kansas City	23	cents.
To Omaha, Neb.	23	"
To Lincoln, Neb.	24	"
To Topeka	26	"
To Wichita	28½	"

The distances from the illustrative points are:

From Camden to Kansas City	642	miles.
" " " Omaha	847	"
" " " Lincoln	849	"
" " " Topeka	637	"
" " " Wichita	607	"
From Trinity to Kansas City	668	miles.
" " " Omaha	873	"
" " " Lincoln	875	"
" " " Topeka	682	"
" " " Wichita	633	"
From Plaquimine to Kansas City	801	miles.
" " " Omaha	1006	"
" " " Lincoln	1008	"
" " " Topeka	868	"
" " " Wichita	812	"

It will be seen upon examination that the distances from Louisiana points to Wichita and Kansas City are approximately the same, while from Arkansas and Texas points it is somewhat further to Kansas City than to Wichita. Topeka is in all cases more distant than Wichita, and Omaha and Lincoln are over 200 miles further from the points of origin than Kansas City. Nevertheless the rate to Wichita exceeds that to Kansas City and Omaha by 5½, to Lincoln by 4½, and to Topeka by 2½ cents. The complainant insists that these rates to Wichita are in violation of the Act to regulate commerce: First, in that the rates are unreasonable under the first section. Second, in that all the defendants grant to Kansas City and the other points named an undue preference under the third section. Third, in that the Atchison, Topeka & Santa Fe, and the Chicago, Rock Island & Pacific companies violate the fourth section in that they transport this traffic through Wichita to a more distant point for a less compensation than is charged Wichita.

The defendants insist that the rates are reasonable and justify the discrimination by competitive conditions existing at 9 I. C. C. REP.

Kansas City and the other points named which do not exist at Wichita. The facts touching this competition are as follows.

Formerly the Missouri river valley and region to the west of that river, including Kansas City and the State of Kansas, obtained its lumber from the pine forests of the north. Chicago was a distributing point for this lumber and the adjustment of rates from there may serve to show the general scheme. The rate from Chicago to Kansas City was about 15 cents, varying somewhat from time to time. The rate to points west of the Missouri River, like Wichita, was made by adding to the Chicago rate to Kansas City the local west, which was, in case of Wichita, 15½ cents, giving a total rate to Wichita of 30½ cents as against 15 cents to Kansas City.

When the supply of northern pine began to run short attention was turned to the south where vast tracts of timber existed. The average distance from this source of supply to Kansas City was approximately the same as from the northern forests, the quality of the timber not so good. In order to develop the lumber industry in the south it was thought necessary to make a low rate from the southern mills to Missouri River points.

There can be no doubt that this competition with northern pine originally determined the rate from the south to Kansas City. That competition no longer exists. The pine of Wisconsin and Minnesota has been exhausted. It is no longer sold in the Kansas City market, or in the State of Kansas, for those purposes for which southern pine is used. The higher grades of lumber are obtained to some extent in the south and to a still greater extent upon the Pacific coast.

Several lines of railroad carry lumber from these districts in question to Kansas City and the Missouri River which do not serve Wichita, or participate in the transportation of lumber to that point. One of these is the Kansas City Southern which runs directly south from Kansas City to the gulf through two of these lumber districts, and which is said by the defendants to have insisted upon an extremely low rate to Kansas City. Considerable quantities of lumber are also sold on the Missouri River from southern points east of the Mississippi River. The quality of this lumber is about the same as that from the regions

in question, it is used for the same purposes and sells for the same price. It is brought from these sources of supply by still other lines of railway, the Illinois Central, the Mobile & Ohio, and others to St. Louis, and from thence over various routes to Kansas City.

We find that originally this competition with northern pine was a controlling factor in producing the low rate at Kansas City and that this competition did not exert the same influence at Wichita since the rate from these northern regions to that point was 15½ cents higher than to Kansas City. This competition no longer exists and does not therefore require a continuance of the original adjustment of rates. There is however a competition between carriers leading from sources of supply west of the Mississippi River to Kansas City which does not operate at Wichita and there is also a competition between mills and carriers east of the Mississippi River and those west of that river at Kansas City, which is not felt to the same extent at Wichita. We can see no valid reason today which justifies a lumber rate to Kansas City much if any lower than that to Wichita; at the same time, looking to the competition of the past and the adjustment of rates which that has produced; to the interest of the various lines reaching Kansas City and not Wichita; to the competition between mills and carriers east of the Mississippi River; to the extensive readjustment of rates which would be required if any substantial departure from the present adjustment were made; we do not think that the defendants serving Wichita could probably obtain an adjustment which would place Wichita upon a parity with Kansas City in the matter of these rates.

The defendants are an important factor in producing the Kansas City rate. If for the last fifteen years they had been compelled to maintain the same rates on lumber at Wichita and kindred points as at Kansas City the entire scheme of lumber rates would probably be essentially different from what it is. Still in our opinion these defendants do not control the rate at Kansas City; they could not at the present time secure any material advance of that rate by the exercise of ordinary and lawful measures.

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Omaha and Lincoln are Missouri River points at which the competitive conditions prevailing at Kansas City apply in the main. Several witnesses for the defendants stated that they knew of no reason why a better rate should be given Topeka than was accorded Wichita, and no one gave any justification for the maintenance of the lower rate. Upon this testimony we find that conditions at Topeka do not differ from those at Wichita.

Is the rate to Wichita reasonable in itself? What has been said in the two preceding cases as to the unsatisfactory nature of the testimony bearing upon this question as applied to rates on grain and coal may be repeated here; still here as there the question is presented and it is our duty to dispose of it.

The first lumber rates from the territory in question were published in 1888. These were not the same from all points of supply nor did they observe a uniform difference between Kansas City and Wichita; but early in the year 1889 rates were made the same from all the territory involved in the proceeding to the various destinations in question, being 22 cents to Kansas City and 27½ to Wichita. The rates thus established continued in effect until December 15, 1899, when they were advanced to 23 and 30 cents respectively. This advance called forth a storm of dissent from lumber dealers, and the Missouri, Kansas and Oklahoma Lumbermen's Association, in addition to protesting vigorously against the increase, entered upon an energetic campaign to secure such an amendment to the Act to regulate commerce as would enable this Commission to make and enforce an order prescribing a reasonable rate. Thereupon the railroads came to an understanding with the association, it being agreed that the lumbermen should desist from further agitation for an amendment of the interstate commerce act while the railroads were to reduce the rate at Wichita and similar points to 28½ cents. This was done October 1, 1900, and such is the present rate. The defendants insist that these lumber rates from the south were originally made in competition with those from the north and were abnormally low. To this proposition, so far as the Wichita rate is concerned, we can not assent. That rate was not even at first competitive to the same degree as was the rate to Kansas City. Rates from the north to Wichi-

ta were $15\frac{1}{2}$ cents higher than to Kansas City while from the south the difference was but $5\frac{1}{2}$ cents. If southern mills could compete at Kansas City on substantially an equal rate they must have had a virtual monopoly of territory like Wichita in which the rate gave them the advantage of 10 cents per hundred pounds. In point of fact whatever may have been the condition at the very first for many years there has been no serious competition with northern pine at interior points in the State of Kansas.

Nor do we think that this rate was ever abnormally low. Much that has been said in the two previous cases respecting the desirability of grain and coal as traffic is equally true of lumber. The loading and unloading is at the expense of the shipper. Cars can be heavily loaded, although in this particular, lumber is somewhat inferior to coal or grain. The expense of collecting and concentrating the traffic is small, and it is hauled over the greater part of the distance as a through proposition, without special requirement for haste, in such amounts and at such times as best suit the carrier. It furnishes return loads for cars used in the movement of grain from these same localities to the Gulf. Wichita is situated but a trifle over 600 miles from the mills of Arkansas and Texas. As we have seen in the previous cases, no unusual difficulties in construction or operation are found upon the lines transporting this lumber. That city is entitled to the benefit of its location. A rate of $27\frac{1}{2}$ cents per hundred pounds yields approximately nine mills per ton mile almost as much as is received on the average by the roads serving Wichita for their entire traffic as appears from our statement in the grain case just preceding. A comparison with other rates is not of great value, but it can be confidently affirmed that the bulk of the lumber which is moved anything like a corresponding distance in different parts of this country pays a less charge than this. Upon the east of the Mississippi for example the Illinois Central and Mobile & Ohio receive less than seven mills per ton mile for a similar haul. Such a rate cannot be called low. It is high; only unusual conditions justify a higher.

That rate continued in effect for almost 11 years. It was never competitive like that at Kansas City or like the grain rate

at Wichita. In those 11 years the general average of railroad rates throughout the United States as measured by the ton mile fell 20.93 per cent. During that period severe financial distress prevailed in every business and in all sections; yet this rate has never been reduced. Such a rate should not be advanced without some strong reason in support of that action. The defendants allege that increased cost of operation necessitated the advance. What has been said in that respect in the preceding cases need not be repeated here. Decreased cost of operation in the past had not led to a reduction and there is nothing in this proceeding, taken in connection with our general knowledge of the situation, which satisfies us that such advance was necessary or proper.

Moreover it should be noticed that, even if the rate at Wichita and corresponding points were restored to the former 27½ cent basis, the defendants would still obtain a substantial increase in revenue from this lumber traffic. The rate to Kansas City is one cent per hundred higher than formerly and the same advance must exist at all points basing upon the Missouri River. There is no reason why this slight reduction at Wichita should affect the rate at Kansas City; and the maintenance of these advances at Missouri River points, to which according to the testimony the greater quantity of this lumber goes, must yield a considerable increase in revenue.

Again the testimony of the defendants shows that in the past these lumber rates have not been maintained either at Kansas City or Wichita. Today they are; and this must mean a substantial saving in revenue to the defendants over previous years.

A rate of 27½ cents from Arkansas and Texas points to Wichita, a distance of slightly over 600 miles, is, in our opinion, based upon a general knowledge of rates and the relation of rates, sufficiently high for the transportation of lumber under the conditions there prevailing. It is higher than that generally applied in other territories for similar service. It yields a revenue per ton mile almost, in case of the Missouri Pacific quite, equal to that received by these defendants upon their entire business although this traffic is among the most desirable from a transportation standpoint. This rate had been in effect

for many years without being reduced when other rates declined. The publication of a higher rate to Missouri River points and the general maintenance of all lumber rates adds materially to the revenue of the defendants. Under these circumstances, while the testimony upon this point is unsatisfactory, we feel that any advance at Wichita beyond $27\frac{1}{2}$ cents is unreasonable. As already observed, we have no special information as to the density of traffic, or the cost of construction or operation, or the net result of operation in case of these lines involved. If it appeared that they did not yield a fair return upon their legitimate value a different question would be presented. We find that a rate of $28\frac{1}{2}$ cents per hundred pounds for the transportation of lumber from Camden, Arkansas, and Trinity, Texas, to Wichita is unjust and unreasonable.

The defendants urge that today they are obliged to pay the lines originating this traffic considerable sums in the way of divisions; that this must be paid out of the total rate and that therefore the amount which they actually receive for the performance of the service is less than formerly. The testimony in this case upon that point is not very definite, but we know from other investigations substantially what the facts are. Logging roads have been extended from the main lines of the defendants back into the forests often for a considerable distance. Those roads are owned and operated by the mills, and are used usually for the purpose of transporting logs to the mill, but sometimes to carry the lumber after it has been sawed from the mill to the main line. The defendants allow those roads from 1 to 3 cents per hundred pounds, in some special cases more.

The full rate is charged where lumber is manufactured upon the main line from logs brought there otherwise than by railroad. The defendants grant these concessions to the logging road for the purpose of bringing into market lumber not otherwise accessible and thereby increasing the amount of their traffic. It may be doubted whether an allowance of this kind, the purpose and effect of which is to develop the traffic of the defendants, should be accepted as an excuse for advancing the rate from points at which no such allowance is made; but without

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deciding that, there is nothing in this case showing that the increased traffic obtained is not a sufficient consideration for the making of the division.

CONCLUSIONS.

There are competitive conditions at Kansas City, Omaha and Lincoln, not existing at Wichita, which have produced the low rate at Kansas City and those other points. The defendants do not control the Kansas City rate and could not advance it. They do not, therefore, under the facts in this case, upon the holding of the Supreme Court of the United States as set forth in the preceding cases prosecuted by this same complainant violate the third or fourth section by maintaining a higher rate at Wichita.

The Commission knows of no good reason why those lumber rates from southern mills should be higher to Wichita than to Kansas City, but that relation has been established and we are apparently without power to change it under the law as interpreted.

The circumstances and conditions at Topeka do not differ from those at Wichita. All the defendants therefore are in violation of the third section in according a lower rate to that city than is maintained at Wichita, a much nearer point, and the Santa Fe and the Rock Island Companies also violate the fourth section since lumber destined for Topeka is carried through Wichita by those routes. It is probable that the only effect of an order to cease and desist from this unlawful discrimination will be the raising of the rate at Topeka. Nevertheless the point has been made by the complainant and it seems our duty to administer the law.

It has been found that the rate of 28½ cents per hundred pounds charged by the defendant lines running to Wichita for the transportation of lumber from Camden, Arkansas, and Trinity, Texas, to Wichita is excessive, and those defendants will be ordered to cease and desist from maintaining that rate.

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S. MARTEN
v.
THE LOUISVILLE & NASHVILLE RAILROAD
COMPANY.

Decided November 21, 1903.

1. To hold that, after substantial dissimilarity of circumstances and conditions has been shown, the longer-distance rate cannot in any case or to any extent be considered by way of comparison in determining whether or not the shorter-distance rate is unreasonable or unduly prejudicial, particularly when, as in this case, competition and other compulsory conditions are found not to justify the whole disparity between the shorter and longer-distance rates, would be to reject a most appropriate and necessary test of the reasonableness and justice of railway charges. In a case involving shorter-distance charges higher than those to or from longer-distance points the carrier cannot rightfully claim justification for greater dissimilarity in the rates than may be indicated by the ascertained dissimilarity in circumstances and conditions.
 2. The Act to regulate commerce assumes that persons, corporations and localities are interested not only in the rates charged to them but in the rates which are charged to others, and while the Act does not require all rates to be proportional, it nevertheless makes the element of proportion an important one when the rates for any locality are to be determined; and it follows that no rates can be reasonable in and of themselves within the contemplation of the Act, which are made regardless of proportion.
 3. Rates on lumber from Fountain Head, Gallatin, St. Blaise, Pilot Knob and Nashville, Tenn., to Detroit, Mich., are made by adding defendant's rates to Louisville, Ky., to rates in force from Louisville to Detroit. Defendant's rates to Louisville are 10 cents per 100 pounds for the shorter distances from Fountain Head, Gallatin, St. Blaise and Pilot Knob, and 8 cents for the longer distance over the same line from Nashville. *Held*, that there is a substantial dissimilarity of circumstances and conditions as between Nashville and the intermediate points mentioned and that, therefore, the 4th section of the Act to regulate commerce does not apply; that a difference of one cent in the rates fully offsets the difference in circumstances and conditions; and that any greater difference renders the rate from the intermediate points rela-
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tively unreasonable, in violation of section 1, and unduly discriminatory, in violation of section 3, of the statute.

S. Marten for complainant in person.

Ed Baxter for defendant.

P. J. Farrell for the Commission.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, Chairman:

The defendant company, in connection with other carriers, maintains a rate of 22 cents per 100 pounds for the transportation of lumber to Detroit, Mich., from Fountain Head, Gallatin, St. Blaise, and Pilot Knob, in the State of Tennessee, while for transporting the same commodity a greater distance, over the same line and in the same direction, to the same destination from Nashville, Tenn., a charge of only 20 cents is made.

The complainant alleges that the 22-cent rate is unreasonable and unduly discriminatory; that whether the lumber originates at any one of the four shipping points first above named or at Nashville it is hauled by defendant under substantially similar circumstances and conditions; and that by reason of the premises the defendant is violating sections 1, 3, and 4 of the Act to regulate commerce. The defendant denies these allegations and avers that dissimilarity of circumstances and conditions justifies the greater charge for the shorter haul.

The facts deemed material to a proper determination of the question are found as follows:

FINDINGS OF FACT.

The complainant is a resident of Detroit, and his principal office is located in that city. He is engaged as a wholesale dealer in the purchase, shipment, and sale of lumber. He buys at Fountain Head, Gallatin, St. Blaise, and Pilot Knob, ships to Detroit, and sells there in competition with dealers who make similar shipments from other points, including Nashville.

The defendant is a common carrier of interstate traffic and owns and operates an extensive railway system. One of its lines

leads from Nashville almost due north, and through the points from which complainant makes shipments as aforesaid, to Louisville, Ky., a point on the southern bank of the Ohio river. At the latter point defendant's system connects with various lines of railway which run to Detroit and other northern, eastern, and western markets of sale and consumption. The distances from above-named points, respectively, to Louisville are as follows: Fountain Head, 147 miles; Gallatin, 159; St. Blaise, 163; Pilot Knob, 164; and Nashville, 187. The distance from Louisville to Detroit is 376 miles.

There are no joint through rates to Detroit, the through rate being made by adding to the charge of defendant for transporting the lumber to Louisville the charge of connecting carriers from the latter point to Detroit. The rate from Louisville to Detroit is 12 cents per 100 pounds, regardless of the origin of the shipments; but while the defendant charges only 8 cents for the haul to Louisville when the point of origin is Nashville, it charges 10 cents when the lumber originates at either Fountain Head, Gallatin, St. Blaise, or Pilot Knob. It will thus be seen that the difference in rates complained of is wholly caused by the action of defendant.

The only transportation facilities enjoyed by the intermediate points named are those furnished by defendant, except that the Chesapeake & Nashville Railway extends from Gallatin in a northeasterly direction 35 miles to Scottville, Ky.; but the only rail connection of the Chesapeake & Nashville is with defendant's line at Gallatin.

The rail lines extending from Nashville are those of the defendant company, the Tennessee Central, and the Nashville, Chattanooga & St. Louis.

Nashville is situated on the Cumberland river, about 200 miles from its mouth. This river empties into the Ohio river a short distance north of Smithland, Ky., and is navigable during a portion of each year, ranging from 6 to 8½ or 9 months, from its mouth to Burnside, Ky., a distance of about 545 miles. Burnside is 168 miles south of Cincinnati on the Cincinnati, New Orleans & Texas Pacific railway, which is usually spoken of as the Cincinnati Southern railway.

When the Cumberland river is navigable, lumber can be
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shipped from Nashville down that river to the Ohio river, then either up or down the latter to a railroad point, and from there by rail to Detroit; or it can be shipped from Nashville up the Cumberland river about 345 miles to Burnside and from there to Detroit by the Cincinnati Southern and its connections.

When the Tennessee Central is the initial carrier from Nashville the lumber is hauled over that company's line to Emory Gap, Tenn., and from there to Detroit over the Cincinnati Southern and lines connecting therewith. The short-line distance on this route is 684 miles, the distance from Nashville to Emory Gap being about 161 miles.

Shipments over the line of the Nashville, Chattanooga & Louisville Company are hauled to Paducah, Ky., and thence to Detroit by the Illinois Central and its connections. The short-line distance by this route is 748 miles, the distance from Nashville to Paducah being 181 miles.

As stated above, the through rate of 20 cents on lumber from Nashville to Detroit by the Louisville & Nashville line is made by combining the rate in force from Nashville to Louisville with that prevailing from Louisville to Detroit. If this method were adopted when shipments are made over the N., C. & St. Louis road, the through rate would be 22 cents, as the rate from Nashville to Paducah is 8 cents, and that from Paducah to Detroit 14 cents. However, instead of adopting this combination method, the carriers by this route publish a joint through rate of 20 cents.

The line of the Tennessee Central is wholly within the State of Tennessee, and that company does not publish through rates on lumber from Nashville to Detroit. At the time of the hearing the Tennessee Central had been in operation from Nashville only a few months, and had never filed with the Commission a schedule of interstate rates. Since then, however, a schedule has been filed which became effective January 15, 1903. It does not name through rates to Detroit, but it does name a rate of 12 cents from Nashville to Louisville; and by adding to this the 8 cent rate from Louisville to Detroit a through rate may be made which is the same as that over the L. & N. and N., C. & St. Louis lines. But while the distance from Nashville to Louisville on the L. & N. route is only 187 miles, that by the Tennessee Ce

tral is 402 miles. Rates per ton per mile would therefore be: By the former route, .856 of a cent; and by the latter, .389. Also, in the first instance the transportation service is entirely performed by defendant, but if lumber were carried by the Tennessee Central from Nashville two other carriers, namely, the Cincinnati Southern and the Southern, would participate in the transportation. The record does not show any shipments of lumber from Nashville to Louisville by the latter route, and it is not probable that such shipments would be made under existing conditions.

Defendant claims that the rate on lumber from Nashville to Louisville by the L. & N. line is made in competition with rates to Cincinnati from Burnside and Chattanooga, Tenn., by the Cincinnati Southern line. The rates to Cincinnati from the latter two points are: From Burnside, 11 cents; and from Chattanooga, 12 cents. The distance to Cincinnati from Burnside is, as above stated, 168 miles, and from Chattanooga, 338 miles. The distance from Cincinnati to Detroit is 261 miles, and the rate on lumber between these two points is 10 cents. Through rates to Detroit therefore are: From Burnside, 21 cents; and from Chattanooga, 22 cents.

The defendant owns a majority of the capital stock of the N., C. & St. L. Company, and is therefore able to elect the board of directors of that company and through them to control its policy and operations.

We think it fairly appears from the foregoing that the defendant company is in a position to control and that it does control the rate on lumber from Nashville, so far at least as rail transportation to the Ohio river is concerned; and this was admitted by the defendant's counsel, who, in this connection, said: "The rate from Nashville to Louisville is made by the Louisville & Nashville railroad. The Nashville, Chattanooga & St. Louis railroad and the Tennessee Central railroad simply follow the rate that has been made by the Louisville & Nashville railroad, and therefore neither of those two companies is responsible for the rate. The only effect of the competition of the Nashville, Chattanooga & St. Louis railroad and the Tennessee Central railroad in this case is that it compels the Louisville & Nashville railroad to render more satisfactory service to the people

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at Nashville by giving them different lines of communication and service by these rival lines. In other words, it is a competition of service instead of a competition of rates. The second advantage is that the Louisville & Nashville railroad, having fixed the rate from Nashville to Louisville, and that rate having been adopted by the Nashville & Chattanooga road and the Tennessee Central road, cannot increase that rate without the consent of those two roads. They are neither of them responsible for the origin of the rate, but both of them occupy a position to prevent the increase of the rate."

We think the rate from Nashville to Louisville would have to be considerably increased before the Tennessee Central would consider the lumber traffic between those points at all desirable, and this belief, in connection with the ownership of N., C. & St. L. stock above referred to, inclines us to the opinion that if the L. & N. Company regarded the rate from Nashville too low and desired to raise it the consent of the Tennessee Central and N., C. & St. L. could readily be obtained.

But it is said that notice should be taken of the fact that during a portion of each year lumber may be shipped from Nashville by way of the Cumberland river.

If lumber were shipped *up* the Cumberland river from Nashville the only outlet by rail would be from Burnside over the Cincinnati Southern and its connections. It is not claimed, nor is it probable, that lumber would be shipped from Nashville to Detroit by this route. The rate from Burnside to Detroit, as above stated, is 21 cents per 100 pounds. Therefore, if the 345-mile haul by river from Nashville to Burnside were performed without compensation, the shipper would still be obliged to pay more for the transportation than if he shipped in the first instance direct by rail from Nashville.

If lumber destined to Detroit were transported *down* the Cumberland river from Nashville it would be hauled by boat to some railroad point on the Ohio river. The shortest of such haul would be that to Paducah, which is distant from Nashville by river about 212 miles.

While many different kinds of lumber are shipped from Nashville, such shipments are mainly confined to poplar and oak. As lumber is ordinarily shipped, weights per 1,000 feet would

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be about as follows: Poplar, 3,000 pounds; and oak, 4,000 to 4,500 pounds.

Rates per 1,000 feet by river from Nashville, so far as shown by the record, are: To Henderson, Ky., a point on the southern bank of the Ohio river opposite Evansville, Ind., or to Paducah, \$2.50 on poplar, and \$3.00 on oak; and to Louisville, \$5.00 on poplar, and \$6.00 on oak. Corresponding rates per 100 pounds would be about as follows: To Henderson or Paducah, $8\frac{1}{3}$ cents on poplar, and $6\frac{2}{3}$ to $7\frac{1}{2}$ on oak; and to Louisville $16\frac{2}{3}$ cents on poplar, and $13\frac{1}{3}$ to 15 on oak.

The record shows only one shipment of lumber destined to a point north of the Ohio river that was transported from Nashville by river during recent years. That shipment consisted of about 150,000 feet, and was taken down the river from Nashville some time during the season of 1901. Steamboats of the Ryman line make regular trips from Nashville to Paducah and Evansville during the boating season, and the General Freight and Passenger Agent of that line, being asked why the boats did not haul more lumber from Nashville, replied, "because of the low rates by rail." The testimony of Nashville lumber dealers, so far as they were interrogated on this point, was to the same effect. One of them said: "We prefer rail transportation to water." Another stated that the reason why he preferred to ship by rail was because transportation by water is more dangerous. He also said that if shipments were made by water the lumber would have to be transferred at a cost of about 50 cents per 1,000 feet, and that it is liable to be damaged every time it is handled.

It is a matter of common knowledge that shippers will not ordinarily use water routes unless they offer rates that are materially less than those by rail. There are many reasons for this. Water routes, as in this case, are usually longer than rail routes between the same points; and where time is a matter of importance this is a serious drawback. Moreover, lumber transported by water is exposed to the weather, while if shipped by rail it is usually carried in box cars.

As the rates by water are not now sufficiently low to induce shippers of lumber to use the water route from Nashville, we

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think it fair to assume that any lower rates would not be considered remunerative by the water carriers.

In view of these facts, we think it clear that competition by the Cumberland river does not compel a rail rate of 8 cents from Nashville to Louisville; and this was understood to be conceded by defendant's counsel, who, in this connection, said: "I do not claim that the Cumberland river now controls or makes the rate from Nashville to Louisville, but I will show the Commission, I think, to a demonstration that the Cumberland river was originally a factor for making the rate, changed afterwards by the Cincinnati Southern, at Chattanooga."

The record shows that while the rate to Louisville from Fountain Head, Gallatin, St. Blaise and Pilot Knob, namely, 1 cent per 100 pounds, has remained stationary for nearly fourteen years, rates from Nashville to Louisville have ranged as follows: From 1879 to 1884, 9¼ cents; from April, 1884, to May, 1885, 10 cents; from the latter date to December 18, 1894, 9 cents; and from December 18, 1894, to the present time, 8 cents.

During this period of 14 years, rates in general have materially declined. The average rate per ton per mile for the year ending June 30, 1888, on all railroads in the United States was 1.00 cents, while for the year ending June 30, 1902, it was only .75 of a cent. Corresponding figures pertaining to defendant's road are as follows: June 30, 1888, 1.049 cents, and June 30, 1902, .744 of a cent. Meanwhile, defendant's revenues, both gross and net, have increased enormously, and the market value of its stock has greatly advanced.

The line between Louisville and Nashville was the first line constructed by the L. & N. Company. It was begun in 1850 and completed in 1859. Additions to this were afterwards made from time to time, until the company now operates nearly 3,500 miles of railway. Its main line leads from New Orleans through Montgomery, Birmingham, Nashville and Louisville 925 miles to Cincinnati. A branch line has been constructed from Edgefield Junction, Tenn., a point on the main line 11 miles north of Nashville, 311 miles in a northwesterly direction to St. Louis. Another branch leads from Memphis 262 miles in a northeasterly direction to Memphis Junction, Tenn., a point on the main

line 69 miles north of Nashville, and the company has other branches which serve as feeders to its main line.

Although we are unable to state the exact increase in tonnage since 1888, carried over defendant's line between Nashville and Louisville, such data as are available show that this increase must be very large.

Lumber is inexpensive freight and much below the average in cost of transportation, while only a few other commodities furnish to carriers a larger tonnage. For these reasons, among others, it is universally accorded rates of transportation that are relatively low.

The 10-cent rate from the intermediate points yields rates per ton per mile as follows: From Pilot Knob, 1.220 cents; from St. Blaise, 1.227; from Gallatin, 1.258; and from Fountain Head, 1.361. If the rate to Louisville from the intermediate points were reduced to 9 cents, rates per ton per mile would be: From Pilot Knob, 1.098 cents; from St. Blaise, 1.104; from Gallatin, 1.132; and from Fountain Head, 1.224.

The record shows that between 1879 and 1884 the minimum carload weight on lumber prescribed by defendant was 20,000 pounds. It was soon afterwards raised to 24,000 and is now 30,000.

With reference to the competition of the Cumberland river, we are satisfied not only that it did not force the reduction of rail rates from 9 cents to 8 cents in 1894, as above found, but also that it would scarcely be a potent factor if the rail rates were somewhat higher. With a rail rate of 10 cents from Nashville some lumber might move from that point by water, but it seems reasonably certain from what appears in this case that a rail rate of 9 cents would still hold all or nearly all of that traffic to the roads as against the river carriers. This view is confirmed by the fact that when the rail rate was 9¼ cents it was advanced to 10 cents for upwards of a year, and was afterwards maintained at 9 cents for more than nine and a half years until the reduction to 8 cents in 1894.

That reduction was not made on account of any change in the transportation conditions at Nashville, but for a quite different reason, which appears from the testimony and is stated by defendant's counsel as follows: "Now, in 1894 the Louisville & N. R. Co. Rep.

Nashville railroad made a reduction in the rate from Nashville to Cincinnati. That reduction was not made because of any reduction in the rates that were being charged by the steamboats . . . It was not caused by the steamboats. . . . The reason of this, as explained by Mr. Goodwin (a witness for defendant) is that the relative adjustment of rates on lumber from Nashville and Chattanooga, respectively, was interfered with by the Cincinnati Southern railroad. . . . The traffic manager of the Cincinnati Southern saw fit to reduce the rate from Chattanooga to Cincinnati on lumber. That disturbed the relation that previously existed between Chattanooga and Nashville. Thereupon the Louisville & Nashville railroad, in order to restore the relation or furnish protection, in the belief of the traffic manager, to enable the Louisville & Nashville Railroad to compete with the Cincinnati Southern, reduced the rate from Nashville to Cincinnati, and he had to reduce the rate from Nashville to Louisville so that Louisville would be able to compete with Cincinnati in the sale of lumber that was brought to those two cities from the south. If the traffic manager had not reduced his rate from Nashville to Cincinnati the Nashville traffic might have been diverted. If he had not reduced his rate to Louisville then Louisville would have suffered for the benefit of Cincinnati. In other words, the reduction in 1894 was the direct effect of active, actual, controlling competition between the Cincinnati Southern and the Louisville & Nashville railroads. Both lines were engaged in gathering up lumber in the territory south of Nashville and Chattanooga and carrying it to Louisville and Cincinnati for market. Each one was interested in getting its due share of the traffic movement and the reduction made by the Cincinnati Southern was to enable that railroad to get what it considered to be its share, and the reduction which followed by the Louisville & Nashville was to enable that road to retain what it considered was its due share, as the traffic manager thought. So the reduction of rates was the result of competition between rail carriers."

The record shows that lumber from the intermediate points, Fountain Head, Gallatin, St. Blaise and Pilot Knob, originates in territory situated from 5 or 6 to 10 or 12 miles distant from such shipping points and is hauled thereto by wagon, while lum-

ber shipped from Nashville originates very largely in the territory between Nashville on the one hand and Emory Gap, Burnside and Chattanooga on the other, and is hauled to Nashville by rail, or taken down the Cumberland river from lumber sections adjacent to the river between Nashville and Burnside, except that a small amount is drawn into Nashville by wagon.

Through rates on lumber shipped to Detroit from Chattanooga are made by adding to the rate charged by the Cincinnati Southern from Chattanooga to Cincinnati the rates exacted by connecting carriers for transporting it from the latter point to Detroit. In cents per 100 pounds these rates have ranged as follows: On December 15, 1894, the former was reduced from 15 to 12 cents, and has ever since remained at the latter figure. At the time of this reduction the rate from Cincinnati to Detroit was 9 cents, and so continued until January 1, 1900, when it was raised to 10 cents, which latter rate has since been in force. The reduction of December, 1894, from Chattanooga was followed by reductions in defendant's rates from Nashville to Cincinnati and Louisville; but while, as has been seen, the through rate from Nashville to Detroit by way of Louisville is only 20 cents, there has never been a time since December, 1894, when lumber could be shipped from Chattanooga to Detroit for less than 21 cents, and since January 1, 1900, the rate has been 22 cents. Therefore, if the reduction of December, 1894, in the rate from Nashville to Louisville had not been made, Nashville lumber dealers would be at no disadvantage so far as transportation charges are concerned in competing with Chattanooga lumber dealers in the Detroit market.

The Cincinnati Southern prior to its reduction of the rate from Chattanooga to Cincinnati in December, 1894, made no higher charge from intermediate points. When that reduction was made it did not immediately reduce the intermediate rates, but it did so on June 10, 1897, and since that date its rates to Cincinnati from shorter distance points have not been higher than the rate for the longer distance from Chattanooga. On the other hand, the reduction contemporaneously made by the defendant, the Louisville & Nashville, was limited to Nashville, thereby widening the disparity already existing in rates from Nashville and intermediate points to Louisville, and it claims

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that such greater disparity resulted from the action of a carrier from Chattanooga which has made the Chattanooga rate its maximum charge from shorter distance localities.

At the time of the hearing in this case the rate from Burnside to Detroit was 21½ cents per 100 pounds, but it has since been reduced to 21 cents. So far as lumber is concerned, the only competition between Nashville and Burnside pertains to lumber produced along the Cumberland river between the two points, and the record shows that not more than 5 per cent of this is hauled to Burnside, while the balance is taken to Nashville. One reason for this disparity is probably the fact that much of this lumber goes to Nashville in the form of logs and can be taken down the river more easily than in the opposite direction.

Lumber originating at points on the Tennessee Central may be transported to Detroit either by way of Nashville or Emory Gap, but while the rate from Nashville to Detroit is only 19 cents the rate from Emory Gap to Detroit is 22 cents.

It will be seen from the foregoing that even without the reduction made by the L. & N. Company in December, 1894, the company would have an advantage over the Cincinnati Southern in competing for lumber originating in territory bounded by Nashville on the one side and Chattanooga, Burnside and Emory Gap on the other. Distances to Detroit from the points in question are as follows: From Nashville, 563 miles; from Burnside, 429; from Emory Gap, 522; and from Chattanooga, 599.

When the competition between Nashville and Chattanooga is referred to by defendant's counsel pertains to points of origin located south of Chattanooga, we think the average distance from such points to Detroit must be less by Chattanooga and the Cincinnati Southern than by Nashville and the defendant's line, but this point cannot be definitely determined from the record.

According to the testimony, the average cost of transporting the lumber to Nashville in the first instance from points of origin is 7 or 8 cents per 100 pounds, but the difference, if any, in this respect between Nashville and the intermediate points does not definitely appear, as the cost of hauling the lumber by wagon from 5 or 6 to 10 or 12 miles to the railroad stations at the intermediate points was not shown. Also, defendant publishes a tariff wherein it is provided that when logs or rough stock are

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shipped over its line to Nashville on a local rate, put through a process of manufacture there, and the manufactured product afterwards shipped over defendant's line to a market point thereon, the shipper is entitled to a refund which, according to the testimony, averages in amount from 30 to 35 per cent of such local rate. Under this arrangement shipments can be made from either St. Blaise or Pilot Knob to Nashville and from the latter point to Louisville for an aggregate charge of 10½ cents per 100 pounds.

Both Nashville and Chattanooga are important cities and large lumber markets, and in this they differ from the intermediate points. Defendant's General Freight Agent estimated shipments over defendant's line from Nashville at 3,500 carloads a year, which is three or four times as much as the combined shipments from the intermediate points.

Defendant claimed that cost of carriage from the intermediate points is greater than from Nashville, because shipments from the former are carried in local trains and from the latter in through trains, but it was not claimed that anything more than the ordinary difference between local and through service exists.

Based upon the foregoing, we make specific findings as follows:

The circumstances and conditions surrounding transportation at Nashville are substantially dissimilar from those at the intermediate points of Fountain Head, Gallatin, St. Blaise and Pilot Knob to such extent as to justify the discrimination in rates between Nashville and the intermediate points, brought about by the reduction from 10 to 9 cents in the rate from Nashville, made by defendant in May, 1885.

The reduction from 9 to 8 cents in the rate from Nashville, on December 18, 1894, was not made necessary by competition between carriers at Nashville and has not been otherwise justified; and the result of such reduction therefore was and is to render the rate from the intermediate points, as compared with that from Nashville, unreasonable and unduly discriminatory.

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CONCLUSIONS.

After careful consideration of the facts and circumstances disclosed by the record in this case, we conclude as follows:

We think river competition at Nashville is not now and for many years has not been a potent factor, though it is probable that if the rail rate were raised to 10 cents some lumber would move from that point by the water route; and we hold that the presence at Nashville of a navigable river and other circumstances and conditions of importance that do not exist at the intermediate points justify such departure from the rule of the fourth section of the Act to regulate commerce as was made by the defendant in May, 1885, when it reduced the Nashville rate from 10 to 9 cents. But it is admitted by defendant's counsel that the reduction from 9 to 8 cents in that rate, made December 18, 1894, was not caused by river competition at Nashville, that the defendant makes the rate from Nashville, and that other rail carriers there simply follow that rate; and we hold that the latter reduction, unaccompanied as it was by a corresponding reduction from the intermediate points of Fountain Head, Gallatin, St. Blaise and Pilot Knob, and placing as it did the latter points at a disadvantage in competing with Nashville in the Detroit market of sale and consumption, resulted in undue and unreasonable and unjust discrimination against the intermediate points and rendered the 10-cent rate therefrom relatively unreasonable, and therefore was and is, under the circumstances in violation of sections 1 and 3 of the Act.

The reason given by defendant for this reduction is that the Cincinnati Southern road reduced the rate from Chattanooga and thereby changed the relations formerly existing between Nashville and Chattanooga; but it will be observed that after the reduction from Chattanooga and before the reduction from 9 to 8 cents in the rate from Nashville, the latter point in the matter of transportation charges was on an equal footing with the former, while in other respects Nashville had a great advantage.

Competition in this case between the defendant company and the Cincinnati Southern is confined very largely to territory lying between Nashville on the one hand and Chattanooga

Burnside and Emory Gap on the other, and the character of this territory is such that the lumber which originates there will naturally move in the first instance to Nashville. A large portion of it is produced at points along the Cumberland river between Nashville and Burnside, and of this it has been shown that Nashville secures 95 per cent.

Ever since the reduction from 9 to 8 cents the rate on lumber from Nashville to Detroit has been lower than the rate to the same destination from any of the Cincinnati Southern points mentioned to the extent of at least 1 cent per 100 pounds. At the present time it is 2 cents lower than the rate from either Chattanooga or Emory Gap and 1 cent lower than that from Burnside.

In the case of *Louisville & N. R. Co. v. Behlmer*, 175 U. S. 648, 44 L. ed. 309, 20 Sup. Ct. Rep. 209, Mr. Justice White, in delivering the opinion of the court, said: "It follows that whilst the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First, the absolute command of the statute that all rates shall be just and reasonable, and that no undue discrimination be brought about, though, in the nature of things, this latter consideration may in many cases be involved in the determination of whether competition was such as created a substantial dissimilarity of condition. Second, that the competition relied upon be not artificial or merely conjectural, but material and substantial, thereby operating on the question of traffic and rate making, the right in every event to be only enjoyed with a due regard to the interest of the public, after giving full weight to the benefits to be conferred on the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered."

We believe the method of investigation thus indicated, if followed in this case, will lead to the conclusions we now report.

The intermediate points are competing with Nashville in the Detroit market, and the higher the rate from the intermediate points as compared with that from Nashville the more difficult it is for shippers from the former points to compete with those

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from the latter point. Also, whatever lessens competition in the Detroit market, is theoretically at least, an injury to that locality and the consumers there.

We have found that if the defendant wished to increase the Nashville rate to 9 cents other rail carriers there would willingly join in the advance, and that the amount of lumber transported by river from Nashville under a 9-cent rail rate would not be materially increased. It is not probable that any substantial amount of the lumber now brought to Nashville in the first instance would, with a 9-cent rate in force from Nashville, seek market by way of Chattanooga or other points on the Cincinnati Southern road, but if some lumber should be diverted by reason of such higher charge, the defendant would apparently secure as much net revenue from the increase in rate. If, on the other hand, defendant should elect to reduce the intermediate rate from 10 to 9 cents, as we think it should, it would do so because it prefers to do justice to the intermediate points in that way, or because it prefers, for whatever reason, to keep the 8-cent rate in effect from Nashville. It is a matter of common knowledge that the lowering of transportation charges tends to increase the amount of traffic even at non-competitive points.

It is true that this holding leaves the defendant free to remove so much of the discrimination between Nashville and the intermediate points as we believe to be undue and unreasonable either by reducing the rate from the latter points or by increasing that from Nashville; but in either event the intermediate points will be benefited.

This is not like the Behlmer case where, as the court said, if the defendants were forced to abandon the hay traffic they obtained by accepting the lower longer-distance rate forced upon them by the competition of other carriers connecting with Charleston, the common destination, they would thereby suffer injury without any resulting benefit to the complainant; neither is it similar to other cases wherein the conclusions of the Commission have been reversed by the courts because the Commission, by reason of what was held to be an error made by it in construing the Act, failed to take into consideration certain competitive conditions. Unless it can be said that a discrimination caused by a reduction not necessary to meet actual and substantial

tial competition of controlling force, but prompted solely by a desire to secure to Nashville an advantage it is not entitled to naturally, even though such advantage can be obtained only through the employment of artificial means and by depriving the intermediate points, for whose rates the defendant is wholly responsible, of the natural advantage their location entitles them to, they being nearer than Nashville to the consuming market, is justifiable, we think our decision in this case must be sustained.

It is often difficult to say what constitutes a reasonable rate, and more difficult to give in detail the reasons that lead to the conclusion reached. Although the Supreme Court of the United States has furnished certain rules by which to test the reasonableness of transportation charges, and although this Commission has endeavored to apply those rules, yet whenever it has interrogated railway officials as to whether or not they are governed by them when making rates of transportation, they have invariably answered in the negative and said that to do so would be impracticable. The carriers do not apparently possess the necessary data for that purpose and there is at present no other source from which the Commission can obtain such data.

Under these circumstances to hold that, after substantial dissimilarity of circumstances and conditions has been shown, the longer-distance rate cannot in any case or to any extent be considered by way of comparison in determining whether or not the shorter-distance rate is unreasonable or unduly prejudicial, particularly when, as in this case, competition and other compulsory conditions are not found to justify the whole disparity between the shorter and longer distance rates, would be to reject a most appropriate and necessary test of the reasonableness and justice of railway charges. It seems to us that in a case involving shorter-distance charges higher than those to or from longer-distance points the carrier cannot rightfully claim justification for greater dissimilarity in the rates than may be indicated by the ascertained dissimilarity in circumstances and conditions.

The defendant insists that it was entitled to reduce the rate from Nashville and yet leave undisturbed the rate from the intermediate points in question solely because a reduction has been made from Chattanooga, a point not served by this railway, and timber comes to Chattanooga and Nashville from the interven-

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ing country and from a considerable section south of those cities. We have found as a matter of fact that the conditions relating to the supply of material for lumber manufactured at Nashville and Chattanooga from this Southern territory were not such as to require the defendant, for the protection of its legitimate interests, to reduce the rate from Nashville to Louisville from 10 to 8 cents, and in arriving at that conclusion of fact we have fully considered all of the reasons insisted upon by the defendant. It results therefore that the ground of justification relied upon by the defendant is untenable upon the facts appearing in the record.

But if the facts were otherwise we should have little difficulty in disposing of defendant's contention. The question here is whether on account of a reduction in the rate on lumber from Chattanooga, on the line of the Cincinnati Southern, the Louisville & Nashville is justified in charging a lower rate on lumber from Nashville than from points north of Nashville to Louisville.

A change in rates on particular traffic from points in one section may lead to changes in rates on such traffic from points in another section, but this is a circumstance or condition which naturally affects the general movement of the traffic and the general system of rates on such traffic rather than the traffic rates from a specified point. Take the case of Chicago and Kansas City, both large grain markets which obtain grain in a common producing region west of the Missouri river. The line leading east from Kansas City reduces the grain rate from that point to New York. Would that reduction justify the line leading from Chicago in reducing the grain rate from that city to New York, charging a higher rate from grain shipping points on its line east of Chicago? We think not. Years before this case was brought the Cincinnati Southern had reduced its rates on lumber not only from Chattanooga but also from points north of Chattanooga to Cincinnati. The defendant, acting upon such reduction from Chattanooga, reduced its rate from Nashville only, but kept up its rate from intermediate points north of Nashville.

It wholly disregarded the competition of Gallatin and other lines on its line north of Nashville, with Nashville, with Cl

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tanooga, and with Emory Gap, Burnside and other points north of Chattanooga.

We think a broad view of what constitutes profitable policy for a carrier includes the increase of trade at all stations and the building up of the various localities along its line, and while a carrier may find some temporary or comparative profit in concentrating traffic in large cities, the interests of the public, generally speaking, lie in an opposite direction; and it is easy to see that a carrier may do much unjustifiable injury if it is not restrained therefrom by fear of making rates at non-competitive points which, when compared with those at competitive points, are unreasonable; in other words, rates which, though not absolutely unreasonable in and of themselves, are upon all the facts and circumstances relatively unreasonable.

In *The Matter of Chicago, St. P. & K. C. R. Co.* 2 I. C. C. Rep. 231, 2 Inters. Com. Rep. 137, Chairman Cooley, in delivering the opinion of the Commission, said: "The Commission is of the opinion that the phrase, 'Rates reasonable in and of themselves,' which is often made use of in similar cases to the present, is very likely to be misleading. It is a phrase which seems to imply that the particular rates may be considered by themselves as if they were and could be affected by no others. . . . But it is not the theory of the Act to regulate commerce that the reasonableness of rates can thus be separately and independently determined. On the contrary, it is assumed in the Act that persons, corporations and localities are interested not only in the rates charged to them but in the rates which are charged to others also; and while the Act does not require all rates to be proportional, it nevertheless makes the element of proportion an important one when the rates for any locality are to be determined. No rates can therefore be reasonable in and of themselves within the contemplation of the Act which are made regardless of proportion."

We think these views are correct, and consider them especially applicable to the present case. When the rate from Nashville was reduced a new element was created. That element operated to the injury of the intermediate points and should therefore be given due consideration.

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Aside from the disparity in rates between Nashville and the intermediate points, there is much in this case tending to show that the rate from the latter points is unreasonable. That rate has remained stationary for nearly fourteen years, while during the same time rates in general have materially declined. As stated in the findings of fact, the average rate per ton per mile for the year ending June 30, 1888, on all railroads in the United States was 1.001 cents, while for the year ending June 30, 1902, it was only .757 of a cent. Corresponding figures pertaining to defendant's road are as follows: June 30, 1888, 1.049 cents, and June 30, 1902, .744 of a cent. During this 14 years defendant's revenues, both gross and net, have increased enormously, and the market value of its capital stock has greatly advanced. A 9-cent rate from the intermediate points would yield an average rate per ton per mile of more than 1.1 cents, and as the tonnage carried over defendant's line between Nashville and Louisville, comparatively speaking, must be large, although we have no way of showing the exact amount, and as lumber is of such a character and transported under such circumstances and conditions that it is universally accorded relatively low rates of transportation, we think this rate would furnish reasonably fair compensation for the service performed. All these things tend to show that the 10-cent rate from the intermediate points is unreasonable. Nevertheless, while we do not hesitate to say, after considering carefully all the facts and circumstances in this case, that it is unreasonable as compared with the rate from Nashville, we do not feel competent to say, entirely independent of the Nashville rate, that it is absolutely unreasonable in and of itself.

The question therefore arises, can it be said that the rate from the intermediate points is unreasonable, in violation of section 1, and unduly discriminatory, in violation of section 3, when it is not found that the rate from Nashville is unremunerative, or that the rate from the intermediate points is unreasonable in and of itself, or that the circumstances and conditions at Nashville and the intermediate points are substantially similar? Apparently, defendant has answered this question in the negative, but we find nothing in the decisions of the Supreme Court that makes it necessary for us to accept that conclusion,

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and in the absence of such authority we are not disposed to do so.

To sum up, we *hold* that there is a substantial dissimilarity of circumstances and conditions between Nashville and the intermediate points and that, therefore, the 4th section of the Act does not apply; that a difference of one cent will fully offset the difference in circumstances and conditions; and that any greater difference renders the rate from the intermediate points relatively unreasonable, in violation of section 1, and unduly discriminatory, in violation of section 3.

An order in accordance with the views herein expressed will be made.

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CHARLES ROTH

v.

THE TEXAS & PACIFIC RAILWAY COMPANY

On submission by a railway company of shipper's claim for carload on a mixed carload of lemons and pineapples, it appeared that tariff provided for mixed carloads of lemons and bananas and of apples and bananas, and that pineapples might be mixed in a carload almost any other kind of green fruit except lemons or oranges. That a matter submitted in this way should be treated as a case of complaint and answer; that the railway company should amend its tariff so as to provide for mixed carloads of lemons and pineapples; that it should make reparation to complainant for the excess above the carload rate upon the shipment in question.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The papers in this matter have been submitted to the Commission for its ruling by Mr. E. L. Sargent, General Freight Agent of the Texas & Pacific Railway Company.

It appears that Mr. Charles Roth, a dealer in fruits at New Orleans, on May 21, 1903, shipped from that city to A. A. Johnson & Co., at Dallas, Tex., a mixed carload of lemons and apples expecting that they would be carried by the Texas & Pacific between those points at the Class A rate of 72 cent per 100 pounds on a minimum carload weight of 24,000 pounds amounting to \$172.80. Upon arrival at destination the consignees were charged the rate based on such minimum carload for the lemons and in addition a first-class less than carload rate of \$1.27 on 4,880 pounds of pineapples, amounting to \$62.42. The charges were paid by the consignees and by them deducted from the amount they owed Mr. Roth on the shipment in question. In his claim for refund presented to the railway company Mr. Roth makes the following statement:

"In making this shipment we were under the impression
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the classification relative to mixed carloads of fruit applied to a mixture of lemons and pineapples and so advised consignees before shipping. We billed the car out 241 boxes lemons, 60 crates pines, believing that they took the same rate, and had we known better could just as well have sent a straight car lemons and sent the pines with bananas under one rate which the classification permits. It is singular that fruits of a deciduous nature can be included with bananas, lemons and oranges in same car under one rate and not with lemons alone.

"On this ground 10, 50 or 100 bunches bananas in the above car would permit all items to take carload rate."

Subsequently the papers were brought to the attention of Mr. Sargent, the General Freight Agent of the railway company, and he, in a letter dated June 26, forwarded them to the Commission with the following statement:

"We desire to draw your attention to the attached letter from Mr. Chas. Roth, a New Orleans fruit shipper. His complaint is self-explanatory, and grows out of the rule shown in *Exceptions to Western Classification* (I. C. C. No. 285) published by Chairman Cale. This appears to be a very aggravated case, and with a view to ascertaining what this company should do to adjust the matter, the papers are respectfully referred to you. We will be guided by your judgment or suggestions. We confess from the statement of this shipper he seems to be injured to the extent of \$61.97 by reason of what might be termed a technicality in the published rules and regulations covering the mixing of fruit as shipped in carload lots.

"We will be inclined to apply any remedy that you may care to suggest."

Apparently the freight charges demanded and collected were in accordance with the provisions of the tariff governing the shipment, and the question presented is the same as if Mr. Roth had formally complained that such charges for the transportation of a mixed carload of lemons and pineapples are unreasonable, unjustly discriminating and wrongfully prejudicial, and had included in his complaint a demand for reparation. The facts deemed material to the question presented are set forth in the correspondence and papers submitted by the parties and there is no controversy between them as to the facts. We there-
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fore feel warranted in treating the matter submitted as a upon complaint, answer and hearing of the parties.

Southwestern Tariff Committee Classification Exceptions 1-0, I. C. C. No. 285, in force on the Texas & Pacific Rail provides for mixed carloads of green fruit to Texas point follows:

Fruits, Green:

Apricots,
Bananas,
Cherries,
Cocoanuts,
Pears,
Pineapples,
Plums.

In straight or mixed carloads, minimum weight 24,000 lbs.

Note 1. Bananas and Pineapples in straight carloads, minimum weight 20,000 lbs.

Note 2. Free transportation may be furnished in both directions to man in charge of one or more carloads of Bananas. Maximum limit for return transportation will be twenty days from of shipment.

Oranges and Lemons, straight or mixed, or mixed with Bananas and Cnuts, minimum weight 24,000 lbs.

The Class A rate of 72 cents per 100 pounds applies on shipments of green fruit, straight or mixed, as above indicated, as will be observed, no specific provision is made for a mixed carload of lemons and pineapples, and on such a carload the rate applicable to those commodities will be assessed upon them separately. That was done in this instance. The shipment embraced 241 boxes of lemons, and the tariff of the railway company provides that lemons will be carried at an estimated weight of 80 pounds per box. This made the total weight of lemons 19,280 pounds. The weight of the 60 crates of pineapples is put down in the freight bill at 4,880 pounds. The lemons were charged in the bill at 24,000 pounds, the minimum carload weight, because that weight at the 72-cent carload rate makes a less charge than 19,280 pounds at the much higher than carload rate. This would not be the case with the small quantity of pineapples, and they were charged the less than carload rate.

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Examination of the tariff providing for mixed carloads of green fruit shows that bananas and pineapples may go as a mixed carload and that lemons and bananas mixed take the carload rate; and that pineapples may be mixed in a carload with almost any other kind of fruit therein specified except lemons or oranges. As bananas and pineapples may be mixed and lemons and bananas may be mixed, it is difficult to see why the complainant is not correct in contending that lemons, bananas and pineapples may be mixed in one carload and carried at the carload rate, and yet technically lemons and pineapples cannot be forwarded together in a carload and receive the benefit of the carload charge under the present Classification.

We think with the General Freight Agent of the railway company that this is a clear case of injustice, which is probably due to an oversight in constructing the tariff, and which ought to be remedied by amendment of the tariff so as to provide for mixed carloads of lemons and pineapples as well as mixed carloads of other kinds of fruit as now specified therein, and by making reparation to the complainant.

The railway company should revise its tariff in this respect and refund to complainant the amount collected in excess of what the charge would have been if the 72-cent carload rate had been applied to complainant's shipment as a mixed carload. The shipment covered 19,280 pounds of lemons and 4,880 pounds of bananas, making a total of 24,160 pounds. On that basis the total freight charge would have been \$173.95, and the complainant is entitled to a refund by way of reparation in the sum of \$60.82. The other members of the Southwestern Tariff Committee should, and doubtless will, join with the Texas & Pacific in amending the tariff, but if they do not the Texas & Pacific will be able to issue a separate tariff covering shipments of the kind herein involved.

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GEORGE J. KINDEL AND THE DENVER CHAMBER
OF COMMERCE

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY et al.

1. Except as to 140 commodities, defendant complied with order of Commission directing that rates from the Pacific Coast should not be higher to Denver than to the Missouri River, and later, pending further investigation, the number of articles insisted upon as constituting exceptions was reduced to 32. In this case it was held by the Commission in its previous report that defendants were warranted in charging a higher rate to Denver than to the Missouri River on goods carried from the Pacific Coast, and it is now further held that defendants are justified in maintaining rates from the Pacific Coast which are lower to Missouri River points than to Denver upon rice, hemp, bay powder, blankets, books, boot and shoe heels, chocolate, cocoa and confectionery, but that as to all of the other commodities mentioned in the previous report the rate from Pacific Coast points should not be higher to Denver than to points on the Missouri River.
2. As to traffic other than the excepted commodities herein mentioned, the general rule which has been laid down in this case is that in the charging of these trans-continental rates Denver must receive the same treatment that is accorded to cities in the Middle West and Missouri River territory. It has not been held that rates between New York and San Francisco in either direction must not be lower than at Denver, nor has the inherent reasonableness of the rates to Denver from the Pacific Coast in either direction been considered.

W. B. Harrison for complainants.

W. R. Kelly for Union Pacific Railroad Company.

Henry A. Dubbs and *A. B. Browne* for Atchison, Topeka & Santa Fe Railway Company.

W. F. Herrin for Southern Pacific Company.

P. J. Farrell for the Commission.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

In originally deciding this case the Commission held that rates

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from the Missouri River to Denver should in no case be higher than those from the Missouri River to the Pacific Coast terminals, and that rates from Pacific Coast terminals to Denver should in no case be higher than corresponding rates to the Missouri River. This was affirmed as a general proposition, but it was also held that the rate upon sugar to the Missouri River might be less than to Denver, owing to the fact that this commodity moved under certain special circumstances and conditions which made the rate at the Missouri River competitive, and justified a less charge than to the shorter intermediate points.

Upon the rendering of this decision the carriers complied with the order of the Commission with respect to westbound rates, so adjusting their tariffs that in no case was the rate from the Missouri River to Denver higher than to Pacific Coast terminals. In their eastbound rates the same rule was not universally observed, there being something like 140 cases in which the Denver rate was higher than the Missouri River rate. It had already been held that in case of sugar this relation of rates was proper; manifestly these 140 other commodities might move under such conditions as would render the same relation of rates proper in case of them. It did not therefore appear to the Commission that legal proceedings should be begun for the enforcement of its order until it had further investigated the movement of these particular commodities, and it accordingly reopened the case, requiring the various defendants to make answer stating why a higher rate in these cases was charged to Denver than to the Missouri River.

Most of the defendants answered that they were only intermediate links and had no controlling voice in the naming of these rates. The Southern Pacific and the Atchison roads, those being the parties which had mainly assumed the burden of the defense in the original proceeding, filed answers in greater detail, claiming, in substance, in both instances, that competitive conditions were such at the Missouri River as rendered it necessary to apply the lower rates to that point in order to move the traffic at all from the Pacific Coast, while this competition was not so acute at Denver and permitted the charge of the higher rate at that point. It was alleged in both answers that the pub-
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lic and the railways were alike benefited by this adjustment tariffs, since it was for the interest of the public that all possible competition should be induced between the manufacturers of various commodities, and since the railway, while this traffic did not yield a proper return, in view of the entire cost of service including fixed charges, did receive something over and above the actual expense of movement. The answer of the Atchafalaya Company stated with more particularity that inasmuch as Denver was centrally located, so that it could be served from markets in the east, the south, and the west, competition in rates was not so acute, and therefore it was not necessary to make as low a rate.

The Southern Pacific road further stated that while at the present time a higher rate was charged to Denver upon the entire 140 articles named in the order of the Commission, it was thought that this might be changed as to all those articles, excepting such as were specifically named in the answer of the company, which were 41 in number.

Testimony was taken first at Denver and afterwards at Washington with respect to the conditions surrounding the movement of these specific commodities. The case was afterwards held open pending the taking of testimony in the suit, *Leadville Board of Trade v. Colorado Midland Railway Company*, in which kindred points were involved. That proceeding has been recently settled by the parties and discontinued, and while the rates which are still in question in the matter before us are not of great practical importance in this particular instance it seems proper to announce the views of the Commission touching them.

I. Since the hearing rates upon ten commodities have been readjusted, so that at the present time there is no discrimination against Denver. These are coffee, junk, machinery, hay, genoa, pickled sheep skins, pickled fish, rags, compressed, iron bales, cigars and rubber hose in carloads. The rate on rubber hose in less than carloads is still \$1.65 to Denver as against \$1.50 to the Missouri River. At the time of the hearing the carload rate to Denver was \$1.40, which has now been reduced to \$1.00. No reason has been suggested why the less than carload rate should discriminate, and not the carload rate. No very good reason was suggested why there should

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have been any discrimination, and we think that the discrimination in less than carload rates should be removed.

II. Four commodities plainly fall into the same class with sugar; namely, rice, cocoanut oil, (2 classes) and hemp. These all originate in the East at points from which they may reach the Atlantic seaboard by the all-water route or through Pacific Coast ports. The rates to the Missouri River are not blanket rates, extending all the way to the Atlantic seaboard, but apply in no case farther east than Chicago. In accordance with what has already been decided in the case of sugar, the rates upon these commodities are not in violation of law.

III. There are five other commodities—sea shells, vanilla beans, whale bone, whale oil foots, and herbs, of which the same is true in a qualified sense. These articles originate beyond the Pacific Coast, the sea shells and vanilla beans in the Islands of the Pacific, the herbs in China, while the whale bone and whale oil foots are the product of whales taken in Pacific waters. These commodities may reach the Atlantic seaboard from the point of origin by water or through Pacific Coast ports. The Missouri River rate is not, however, applicable to that territory alone, but is a blanket rate extending all the way to the Atlantic seaboard.

Water competition possibly affords a sufficient reason for maintaining a lower rate upon these commodities to the Atlantic seaboard than to Denver, and this reason applies with diminishing force as the seaboard is receded from. Formerly competition of the Canadian Pacific Railway may have been a controlling factor upon the Missouri River and in territory to the east; but this seems to be no longer active in that region. All the American transcontinental lines transporting traffic from the Pacific coast to the Missouri River are parties to tariffs from Pacific Coast points to Denver.

We find nothing in the case which shows a substantial difference in circumstances and conditions at the Missouri River from that prevailing at Denver. While there might be a competitive condition with reference to one or all of these commodities which would justify a lower rate to the Missouri River, such is not the general rule at the present time, and there is nothing to indicate any such special condition. We can see no reason why herbs

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from China should be carried to Kansas City for less than to Denver, or why if it should be desired to manufacture whale-bone, or convert whale oil foots into soap at Denver, the manufacturers should not enjoy the same freight rate as on the Missouri River. The testimony shows that such articles are not in fact transported to either of these localities, but no reason appears why the published tariff should not be the same.

IV. Nine commodities are produced both on the Pacific Coast and in Colorado. They are hair, copper, cement, glue, honey, mohair, hides and wool, each of the latter two articles making two classes according to the manner in which they are shipped. These commodities are exported from both California and Colorado to the east. It was said in the testimony that there was no movement from California to Denver, which seems to be true at the present time.

To-day these rates are of no practical consequence to Denver. No other reason was shown why a better rate should be published to the Missouri River than to Denver.

V. Five commodities are consumed neither at the Missouri River nor at Denver. These are various kinds of fur skins in various conditions. The first three classes are seal skins, which are brought from the north through the Pacific Coast ports, transported across the continent and then shipped through the Atlantic ports to England for manufacture. As we understand the testimony these skins are not consumed in any portion of the United States to any considerable extent. The fourth commodity is goat and sheep skins tanned with the wool on. Witnesses for the defendants stated that these were not consumed either at Denver or at the Missouri River, but other testimony in the case shows that they are used to some extent in both sections for the linings of saddles. The fifth commodity is the skins of various fur-bearing animals, not yet tanned or otherwise manufactured. The sources of supply of this commodity did not appear.

VI. The seven remaining commodities are manufactured upon the Pacific Coast and consumed both at Denver and at the Missouri River. They are baking powder, blankets, books, boot and shoe heels, chocolate, extracts, and quicksilver.

Of these the first six are also manufactured in the east and the defendants allege that the low rate to the Missouri River and

points east is rendered necessary by the competition of markets. The same conditions attach to these different articles, of which baking powder may be taken as an example. This commodity as already said is produced upon the Pacific Coast; it is also produced in the east. The freight rate from eastern points of manufacture to the Missouri River is very much less than from the Pacific Coast, while the cost of manufacture does not differ greatly in the two localities. If, therefore, Pacific Coast baking powder is to compete at the Missouri River with eastern baking powder, manifestly a rate much lower than the normal one must be put in effect. This the carriers have done, naming an L. C. L. rate to the Missouri River and points east of \$1.35, while the corresponding rate to Denver is \$1.90. In case of chocolate the difference is even more striking, the rate to the Missouri River being L. C. L. \$1.00, C. L. 75 cents, as against corresponding rates to Denver of \$2.20 and \$1.35. These last two rates are both commodity rates. The defendants insist that these rates are necessary in order to move this traffic from the Pacific Coast, that so long as the rate to Denver is reasonable, that locality is not injured, while other parties affected are benefited, the eastern consumer by having an additional market in which to buy this commodity, the Pacific Coast manufacturer by acquiring another market in which to sell, and the railway by obtaining a certain amount of traffic which it would not otherwise get and which yields some profit over the cost of movement. We find as a fact that these rates are probably necessary to enable the Pacific Coast manufacturers to compete with eastern producers at the Missouri River and points further east.

Denver, however, consumes baking powder and chocolate, and the testimony shows that, while considerable quantities of these commodities are carried from the Pacific Coast to the Missouri River, practically none moves from there to Denver. That city obtains its baking powder and its chocolate from Chicago and eastern points of origin. The question immediately arises, therefore, why do not the same conditions which induced a lower rate at the Missouri River produce the same effect at Denver. The manufacturer upon the Pacific Coast might as well sell in Denver as Kansas City; consumers in Denver have the same right to demand a variety of markets as those upon the Mis-

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souri River, the carrier had much better transport these commodities from the Pacific Coast to Denver than to carry them 700 miles farther for the same compensation. How, then, can these defendants justify a reduction at the Missouri River and not at Denver? What circumstances or conditions exist at the former and not at the latter point?

One difference would clearly be that the freight rate from an eastern point of manufacture to Denver is greater than to the Missouri River and that therefore the competitive rate from the Pacific Coast to Denver might be less. That however is no ground relied upon by the defendants, nor is it clear that such ground would be a tenable one. What the defendants insist is this: They would be glad to reduce their rates to Denver but lines leading west from Chicago, St. Louis and other points supplying Denver with these commodities insist that the rate from the Pacific Coast shall not be reduced. At present the eastern lines carry what of these articles is consumed in Denver and they will not suffer transcontinental lines to make a lower rate at the latter point.

Upon this testimony we find that fact to be as claimed by the defendants. The lines serving Denver from the east were heard and we express no opinion as to the justness of the proportion of rates from the Pacific Coast and from the east to Denver. Rates from Chicago to the latter point are substantially lower than from San Francisco but the distance is about two-thirds as great and the cost of operation must be less.

The situation with reference to quicksilver differs from that of the other commodities named in this paragraph in that it is produced upon the Pacific Coast and consumed both at Denver and at the Missouri River it is not produced in the east. It is to some extent imported into this country through the Atlantic ports and the imported article may come into competition with the domestic product. The rate on quicksilver from the Pacific Coast to the Missouri River and points there in car loads is 75 cents, and it was said this was to meet western competition. To Denver the carload rate is \$1.55, the less than the carload \$3.00. The testimony shows that considerable quantities of quicksilver are used in mining operations in the vicinity

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of Denver, and that most of this comes from New York in L. C. L. shipments, the rate being \$2.72. It was further said that a carload of quicksilver would not ordinarily be ordered for Denver consumption although it might be if the freight rate were sufficiently favorable. At the present time the quicksilver consumed in Denver is transported by rail through there to New York and from New York back.

CONCLUSIONS.

No question arises as to the ten commodities mentioned in paragraph one of the foregoing statement of facts since rates upon those articles are at the present time no higher to Denver than to the Missouri River, the Denver rate having been reduced since the last taking of testimony.

Upon our holding as to sugar in the original case the defendants are justified in imposing a higher rate to Denver than to the Missouri River upon the commodities enumerated in paragraph two.

In case of the commodities mentioned in paragraphs three, four and five, we think that the rate to Denver ought not to exceed that to the Missouri River, and that the maintenance of a higher rate at Denver, the shorter distance point, is in violation of the third section by all these defendants, and of the fourth section also by such of them as would transport the traffic through Denver en route for the Missouri River. We do not hold that it might not be proper to maintain a lower rate from Pacific Coast points to destinations upon the Atlantic seaboard than is maintained to Denver. Water competition introduces a difference in circumstance and condition which might perhaps justify such a relation in rates. That question must depend upon the facts in each case and is not passed upon in this opinion. What we do hold is that, if these carriers extend the low rate which water competition forces at the Atlantic seaboard back to the Missouri River, they must extend it still farther to Denver, and that there is no circumstance or condition at the Missouri River which justifies the maintaining of a lower rate from Pacific Coast points there than at Denver. It has in the past been said that the Canadian Pacific railway was an active
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competitor for transcontinental business to and from the Missouri River and territory east, but testimony in this case shows, as already noted, that such competition is not longer forceful. There is no competition at the Missouri River which produces a rate from the Pacific Coast to that point which these carriers *must* accept. They themselves make this rate and can determine the relation of rates which shall exist between those localities. No one of the American transcontinental lines transports traffic from the Pacific coast to the Missouri River which does not also file a tariff from the Pacific Coast to Denver. We regard any adjustment of rates which applies a blanket rate from Pacific Coast points to territory east of the Missouri River and imposes a higher rate upon Denver as an unwarranted discrimination against the latter point.

It is said that the maintenance of these higher rates at Denver is of no practical importance with respect to most of the commodities enumerated since there is no movement to that locality and would not be whatever rate might be in effect. The defendants further urge that if the establishment of any industry using any of these materials at Denver was in contemplation its promoter should come to the railways and endeavor to make some arrangement with them by which the same rate would be accorded to Denver as is now given to the Missouri River. It was said with respect to several of these commodities that upon such a request the reduction would without doubt be made.

All this affords no valid reason why these tariffs should not be brought into conformity with the law. While a discriminatory tariff may not directly injure a locality against which it discriminates so long as there is no actual movement of traffic, it may be a source of indirect injury. A prospective manufacturer might not go far enough in his investigation to solicit some special concession in the rate. But, especially, whatever is granted as a matter of right can be depended upon; whatever is given as a matter of favor may be withdrawn.

In case of most of these commodities the rate to Denver is the regular class rate while that to the Missouri River is a special commodity rate. It may be said that these commodity rates are applied in accordance with a general scheme of rate-making under which they do not extend to Denver. With re-

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spect to that it should be noticed that, whatever may have formerly been the fact, there is to-day in effect no general arrangement of rates which imposes the higher charge to Denver. There are out of all the great number of rates in effect only 32 instances in which this is true.

What has been said with reference to the commodities mentioned in these three paragraphs applies with equal force to rubber hose in less than car loads and quicksilver in carloads. At present the quicksilver which is consumed at Denver is carried by rail through that city to New York and from there brought back again over the same route, a useless haul of nearly 4,000 miles. While the freight rate does not absolutely compel this, it has that tendency and we can see no reason whatever why that commodity should be transported to the Missouri River for 75 cents per hundred while a charge of \$1.55 is imposed for its carriage to Denver.

A more difficult and important question arises as to the first six of the commodities enumerated in paragraph six. These are produced both upon the Pacific Coast and in the east. The cost of production is substantially the same and the freight rate to the point of consumption must also be approximately the same. Since the distance from the Pacific Coast is much greater than from the eastern point of manufacture it follows that if the Pacific Coast manufacturer is to compete in the Missouri River or other eastern markets he must be given an abnormally low freight rate. This rate need not be as low at Denver, since that locality is farther from the east and nearer the Pacific Coast. It was upon this ground that the answers of the defendants justified the lower rate at the Missouri River.

The defendants did not however upon the hearing rely upon this justification alone, but insisted that the rates at Denver were not reduced because they could not be. At the present time they transport little or none of these commodities from the Pacific Coast to Denver; they would be glad to reduce the Denver rate to such a point as would enable them to handle this business, but lines leading from the east where the same articles are produced insist upon the present adjustment of rates. Denver is nearer to the eastern markets than to the Pacific Coast and the cost of operation upon the eastern lines less per mile, which lends

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countenance to the contention of these lines that their rates shall be lower than those from the Pacific Coast. Does this whole situation afford the defendants a justification.

There certainly are instances in which the necessity of a low freight rate to meet the price of a particular commodity in a particular market may create the dissimilarity of circumstances and conditions contemplated by the third and fourth sections. The case *Wichita v. St. Louis & San Francisco Railroad Company et al.*, illustrates this. The question there presented was as to coal rates from the Pittsburg district to Kansas City and Wichita. The distance to Kansas City was 129 miles and the rate 80 cents as compared with a distance of 178 miles to Wichita and a rate of \$1.50. It appeared that, owing to the proximity of other coal fields to Kansas City, coal could not move to that market from the district in question upon a higher rate than the one in effect. Upon this finding the Commission held that the defendants were not in violation of the third and fourth sections by charging less in proportion to the distance to Kansas City than to Wichita. It should be noted that the low price of coal at Kansas City was due to the natural location of that town; moreover, the transportation was in different directions although by the same carriers.

In the case now before us there is no well defined center of competition in the sale of these commodities at the Missouri River. The only advantage which that locality has over Denver is in being nearer the points of production in the east; but when the production is upon the Pacific Coast, Denver enjoys the same advantage of proximity. A moment's consideration must show that a general application of the theory of rate-making contended for in the answers of the defendants would result in endless confusion and discrimination. Baking powder is manufactured both at Chicago and New York. Upon the contention of the defendants the rate from Chicago to New York should be less than that from Chicago to Buffalo and in the reverse direction less from New York to Chicago than from New York to Buffalo. But baking powder is manufactured at numerous other points and there would be no end to the complications which such a rule would introduce into all tariffs. Although there is much in the recent decisions of the Supreme Court, and the

language of those decisions, which supports the position of the defendants, we should be inclined to hold for the present that no lower rate, ought to be made to the Missouri River than to Denver upon these commodities, *provided* the rate at Denver could be controlled by the defendants. It cannot be to this extent, that to reduce that rate would involve the defendants in serious complications, the result of which might well cause them to withdraw from the Missouri River business rather than make the attempt. How far should this fact modify the view above expressed?

Two cases recently decided by the Commission may be instructive.

In *Wichita v. The Atchison, Topeka & Santa Fe Railway Company et al.*, the question presented was as to the relation in grain rates from Kansas City and Wichita to Galveston. While Wichita was considerably nearer to Galveston than Kansas City the rate upon grain was very much higher. It was found as a fact in the case that the rate from Kansas City was controlled by competitive influences which did not exist at Wichita, and which the defendants could not control. That rate was fixed and they must accept it or decline the business. Under these circumstances we held, reversing the previous ruling of this Commission upon the exact question in *Board of R. R. Comrs. of Kansas v. Atchison, Topeka & Santa Fe Ry. Co.* 8 I. C. C. Rep. 304, in obedience to the decisions of the Supreme Court of the United States, that the third and fourth sections did not prohibit the disparity in rates.

In *Marten v. Louisville & Nashville*, decided at the same time, the alleged discrimination was in charging more to Detroit, Michigan, on lumber from stations north of Nashville than from Nashville, a more distant point. The justification was that Nashville and Chattanooga reached Detroit and similar markets over different lines of railway; that these two markets drew their supply of lumber in a measure from the same source, and that since the rate determined whether this lumber should move to market over the line of the defendant through Nashville or over that of its competitor through Chattanooga, there were circumstances and conditions existing at Nashville which did not exist at the points north of Nashville. The Commission 9 I. C. C. REP.

found as a fact that while there was competition of the kind alleged by the defendant such competition did not require reduction of the Nashville rate to the point at which it had been fixed by the defendant, and that if the defendant saw fit to reduce its Nashville rate below what this competition fairly required, it must make a corresponding reduction at the intermediate points. In this case it will be seen that the Nashville rate was not a fixed quantity; the defendant could control it. Hence, the commission might inquire whether the defendant, in fixing its Nashville rate had gone further than competitive conditions warranted.

Now in the case before us competitive conditions require a reduction of the Missouri River rate, while other conditions prevent a corresponding reduction of the Denver rate. The situation created is a manifest absurdity. Chocolate consumed at the Missouri River is carried through Denver 700 miles to the east while chocolate consumed at Denver is brought over this same 700 miles from the east. No proper adjustment of rates would necessitate this useless waste of transportation, which in the end is paid for by the general body of the public. It is however our duty to apply the law as construed by the court of final resort. Under that construction upon a fair consideration of the facts before us we are inclined to think that the defendants are within the law in making a lower rate to the Missouri River than to Denver upon all the commodities enumerated in paragraph six, except quicksilver.

Our general conclusion is that the defendants are justified in maintaining a lower rate from the Pacific Coast to the Missouri River than to Denver upon rice, hemp, cocoanut oil, baking powder, blankets, books, boot and shoe heels, chocolate and cocoa and extracts, but that as to all the other commodities mentioned in this opinion, the rate at Denver should not be higher than at the Missouri River.

While however we are of the opinion that these latter tariffs are in contravention of the Act no order will be made at this time. As already seen the rates in most cases are of no practical consequence to Denver and in no case are they of great consequence. Since the complaint in this proceeding was filed, and without doubt directly owing to the fact of this proceeding, these de-

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fendants have reduced their rates to Denver in both directions upon several hundred commodities. The saving in freight rates to that locality must amount to many thousands of dollars annually. We recognize a disposition upon the part of the defendants to conform their tariffs to law in this respect and expect that in the near future the few cases remaining will disappear without resort to legal proceedings. If at any time in the future it should be made to appear that these rates, which are in our opinion still without the law, are of practical consequence to Denver, we should endeavor to secure a compliance with the views expressed.

It should be carefully noted exactly what points have been passed upon by the Commission in the various stages of this case. It has not been held that the rate from San Francisco to New York may not be lower than that from San Francisco to Denver, nor, in the reverse direction, that the rate from New York to San Francisco may not be lower than that from New York to Denver. In point of fact there are at the present time in effect many rates from eastern points to Denver which are higher than rates upon the same commodities to Pacific Coast terminals. This question has not been considered in this proceeding and its decision would involve entirely different facts from those upon which our decision here is based. Nor have we considered the inherent reasonableness of the rates to Denver from any direction. We have simply held that in the making of these transcontinental rates Denver must receive the same treatment which is accorded to the cities of the Middle West and Missouri River territory.

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THE BUCKEYE BUGGY COMPANY

v.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE NORFOLK & WESTERN RAILWAY COMPANY; THE PENNSYLVANIA COMPANY; AND THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Decided December 2, 1903.

1. Before allowing a carload rating to a carload shipment a carrier is entitled to require that the goods shall be loaded at one time and place and that but a single bill of lading shall be issued, and that the shipment shall be from one consignor to one consignee, but when the goods are so loaded and by the terms of sale become the property of the consignee upon delivery to the carrier, the carrier has no right to inquire where the consignee obtained his title from one or several owners; and the carrier accords the carload rate in case the consignor is the owner, failure of the consignee to extend the same privilege when the consignee is the owner violates sections one, two and three of the Act to regulate commerce. The rule in defendants' classification covering the application of carload rates to carload lots should be so modified as to accord the same rating to consignor and consignee when the condition of ownership is the same after the property is delivered to the carrier is the same.
2. Upon the question whether a carrier may distinguish between a forwarding agent and the actual owner of the goods no opinion is expressed.

Henry M. Huggins for complainant.

Ed. Baxter for Norfolk & Western Ry. Co.

W. O. Henderson for Pittsburg, Cincinnati, Chicago & St. Louis Ry. Co.

S. O. Bayless for Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.

F. A. Davis for Baltimore & Ohio Railroad Company.

P. J. Farrell for the Commission.

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REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

The Buckeye Buggy Company, the complainant in this proceeding, is a corporation under the laws of Ohio, engaged in the manufacture of carriages at Columbus, Ohio. The defendants are carriers by railroad and transport the product of the complainant from Columbus to various points in other states and territories and foreign countries. The complaint is that the defendants decline to allow the combination of carriages in carload lots at carload rates.

From eight to ten different concerns are engaged in the manufacture of vehicles at Columbus. These vehicles are of different kinds and different grades and seldom, if ever, does the same manufacturer produce all kinds and all grades; as a rule, a single grade and a limited variety are turned out. The dealer in carriages at most small country points will not purchase a carload of one kind or one grade, but desires to make up his carload of different kinds and grades. This means that he cannot buy a carload of a single manufacturer, but must procure part from one and part from another. Having purchased a carload in this manner, he wishes to combine them in a single carload shipment, thereby obtaining the carload rate, and for this purpose he instructs the various parties from whom he has made purchases to deliver their goods at the warehouse of some one of his vendors. This party loads the carriages into the car at one time and one place in exactly the same manner that they would have been loaded had the entire carload been bought from one company, and tenders the carload to the carrier for shipment to the owner as consignee. This, according to the testimony, is what the complainant and other carriage manufacturers at Columbus wish to do, and this the defendants decline to permit.

Rule 10 of the official classification provides that commodities of different kinds may be combined in carloads at the carload rate, the rate applicable to the entire carload being the highest which would be applicable to any commodity in the carload and the minimum weight being the highest which would be taken by 9 I. C. C. REP.

any article in the carload. The operation of this rule is restricted by rule 5 (B) which is as follows:

"Rule 5 (B). In order to entitle a shipment to the carload rate, the quantity of freight requisite under the rules to secure such carload rate must be delivered at one receiving station, in one day, by one consignor, consigned to one consignee and destination.

"Receiving agents will not sign shipping receipts bearing the notation 'part carload lot' until shipping receipts for the whole carload have been presented, and the freight delivered, in order that bill of lading may be obtained at the carload rate. Only one original bill of lading for the whole carload shall be issued.

"Receiving agents will not receive and consign shipments of property consisting of several consignments to delivering agents for distribution among several consignees; nor will agents at destination distribute such shipments of property among two or more consignees."

Rule 10 is still further limited by notes 2 and 3 which read as follows:

"Note 2. The foregoing rule will apply only on freight from one consignor or owner, and will not cover L. C. L. shipments of property from two or more consignors combined into carloads by forwarding agents claiming to act as shippers.

"Note 3. The term 'forwarding agents' shall be construed to mean agents of actual consignors of the property, or any party interested in the combination of L. C. L. shipments of articles from several consignors into carloads at points of origin."

The defendants did not altogether agree as to the interpretation of notes 2 and 3. Counsel for the Norfolk & Western Railway Company stated during the taking of testimony, and its general freight agent testified, that, if either the consignor or the consignee was the owner of the entire carload, the carload rating would be applied. Under this construction of the rule the complainant could accomplish all that it desires. Such was not, however, the construction given it by the other defendants. While their position was not altogether clear, and while the attorney for the Baltimore & Ohio Southwestern at one time stated that if title passed to the consignee by delivery to the

carrier, the carload rate would be accorded, the position of the other defendants, and we think the position of that carrier, was that in all cases *the owner* of the property must deliver it to the carrier for shipment. The fact that the consignee became the owner under the contract of sale by delivery to the carrier for shipment was not enough; he must have actually taken possession of the goods and have become the owner in fact *before* the delivery to the carrier. This was the interpretation of the rule by Mr. Rainer, in charge of the bureau of inspection, having jurisdiction of Columbus, who was put forward as the principal witness by the defendants.

Mr. Rainer stated that these notes were first adopted to prevent the "forwarding agent" from doing business. The forwarding agent, according to his testimony, collects less than carload shipments of various kinds, combines these into carloads which he ships in his own name to some one consignee at the point of destination, who in turn receives the carload and distributes the various articles to the parties for whom they are intended. His profit in the transaction is the difference between the carload and the less than carload rating, and this he divides with his customers as an inducement to obtain their patronage. Mr. Rainer testified that this practice subjected the carriers to various kinds of inconvenience and led to endless discrimination between shippers. The case of the forwarding agent, or of the patron of the forwarding agent, was not presented and we have no knowledge, save what may come from general information, as to the advantage which may accrue to the shipping public from this method of handling less than carload business. The forwarding agent has never obtained much foothold in the railway operations of the United States; it is understood that he has been from the first an important factor in those of Great Britain, where he appears to be known as an intercepting agent.

Mr. Rainer was asked to state how the forwarding agent could transact business if the rule required that either the consignor or consignee should be the actual owner of the property. He has, after taking time for consideration, filed such a statement, but fails to point out an instance in which this could be done.

As a matter of fact it would be clearly impossible to conduct the business of a forwarding agent under those circumstances.

Carriages at Columbus are generally sold f. o. b. the cars at that point, so that the title passes to the consignee by delivery to the carrier, although in some few instances a lien is reserved by the vendor.

In case of purchasers residing in the vicinity of Columbus it is of no great practical importance whether shipment be made upon the carload or less than carload rate, but when the goods are to be sent long distances, as for example into the southwest, it becomes a matter of considerable consequence. The less than carload rating from Columbus to Texas common points is \$2.65½ per hundred pounds, the carload rate \$1.31, and the minimum carload 10,000 pounds. To ship this minimum at the carload rate would cost \$131.00, while at the less than carload rating the transportation charge would be \$265.50, a difference of \$134.50 to the purchaser. The testimony showed that this privilege of combination was of great value to most carriage makers at Columbus. One witness testified that a considerable part of his business was in the southwest and that not over one-half this could have been done during the past year without the right of combination at the carload rate.

The immediate injury, resulting from a refusal of the carrier to apply the carload rating in the case before us, is to the purchaser, who has bought a carload of carriages which he desires to transport to destination; but ultimately the carriage manufacturer at Columbus is affected, since if his patron cannot ship in this manner he will seek some other source of supply.

For many years the complainant and others at Columbus have been accustomed to make these combinations. Notes 2 and 3 were first effective July, 1899, but no objection appears to have been entered against the continuance of the practice until recently. On January 28, 1903, the complainant received a letter from one Berry, district inspector under the direction of Mr. Rainer's bureau, calling attention to rules 5 and 10 and stating that combinations must not be made by consignors at points of origin. The last paragraph in the letter read, "You must hereafter desist from this manipulation or this bureau will be obliged

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to subject your shipments, in every case, to the L. C. L. rating, and will also make the matter one of report to the proper authorities." The complainant, fearing from this letter that it might not only be involved in difficulties as to the proper rating upon carload shipments furnished by it exclusively, but also that possibly some attempt might be made to proceed against it criminally, entered complaint to the Commission for the purpose of having its right in the premises defined.

CONCLUSIONS.

The broad question presented has reference to the right of a carrier in according a carload rating to look beyond the transportation itself to the ownership of the property transported. A carload of merchandise is offered for carriage, it is loaded at one time and one place, but a single bill of lading is required, the shipment is from one consignor to one consignee; under these circumstances may the carrier apply the carload rate if the goods are actually owned by the individual who offers them for shipment, and refuse it if they are not? This involves the right of the forwarding agent to do business.

The English Railway Equality Clauses are much like the second section of our own act, for which they undoubtedly furnished the model. The courts of that country have held after the most elaborate consideration that "like circumstances" refer to the carriage of the property, and that the carrier can not impose a higher rate when the property is tendered for shipment by an intercepting or forwarding agent than when offered by the owner. *Great Western R. Co. v. Sutton*, L. R. 4 H. L. 226.

The Supreme Court of the United States has held in *Wight v. United States*, 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. Rep. 822, that the words, "circumstances and conditions" in our own second section refer to carriage and not to competition, following to this extent the English cases.

Upon the other hand the Circuit Court for the Northern Division of the Northern District of Illinois has very recently held, that the carrier may distinguish between the forwarding agent and the owner of the property and may apply the carload rating when the goods are tendered for shipment by the owner,
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and may refuse it when like traffic is offered by the forwarder. *Lundquist v. Grand Trunk Western R. Co.* 121 Fed. Rep. 915. The court in this latter case rested its decision mainly upon the proposition that liability to a greater number of suits, in case the carload was owned by several, created such a difference in circumstances and conditions as would avoid the operation of the second section.

To a lawyer this legal proposition may well seem to create a material difference in conditions; as applied to the actual transaction that difference is hardly substantial. Claims for loss or damage to property in transit make up a very small part of the operating expenses of a railway. It has been frequently said in testimony before us, that risk of this kind is so small that it is not taken into account in fixing rates and the relation of rates upon most commodities. If the liability itself is not considered, still less important is it who may bring suit for the damage. There may be weighty reasons why rules against forwarding agents can be and should be adopted, but this is hardly one of them. No traffic manager ever promulgated notes 2 and 3 on this account.

The question can hardly be regarded as settled in this country. Assuming that the second section does not absolutely prohibit the enforcement of such a rule, it still must be a question of fact whether it is just under the first section and whether it unduly discriminates under the third. We do not, however, think that the justness or propriety of notes 2 and 3 in their general application is of necessity involved here. While the complaint is broad enough to raise that question and while complainant insisted that it should be considered and decided, nothing which the complainant desires to do involves the functions of a forwarding agent, and we think the better way will be to confine our decision to the precise case as presented.

A reference to the statement of facts will show exactly what the privilege is for which the complainant contends. The vendee, who has purchased carriages of different manufacturers to the amount of a carload, desires to consolidate his purchases into a carload by having them brought together at the warehouse of some one of his vendors and by that vendor loaded into the car

and shipped to the address of the vendee as consignee. This we think should be permitted. The defendants may clearly require that the goods shall be loaded at one time and place, that but a single bill of lading shall be issued, that the shipment shall be from one consignor to one consignee; but, when these goods are so loaded, when by the terms of sale they become the property of the consignee upon delivery to the carrier, the carrier has no right to inquire whether the consignee obtained his title from one or from several owners. If they accord a carload rating in case the consignor is the owner, they should extend the same privilege when the consignee is the owner. To make a distinction is to violate the first, second and third sections; the first, because such distinction is without reason and therefore unjust and unreasonable; the second, because for the same service different charges are exacted; the third, because an undue and unreasonable preference is given to one person as against another.

The discussion before us has been mainly upon the second section and it will be sufficient to consider here the bearing of that section alone. This provides, in substance, that no carrier shall exact more from one individual than from another for the performance of the same transportation service under substantially similar circumstances and conditions. It seems to be conceded that the actual service rendered is the same whether the person tendering the carload for shipment is the owner or not, but it is contended that the circumstances and conditions surrounding the shipment are not the same in the two cases. The question before us is, are conditions different when the consignor is the actual owner of the entire carload from what they are when the consignee is such owner. The defendants rely upon four points of difference which may be mentioned separately.

It is charged in the first place that the adoption of this rule is necessary to protect the carrier from fraud and imposition in false billing, false weighing, etc. As applied to the forwarding agent proper, it occurs to us that there may be some practical force to this contention. He makes his profit by securing a low freight rate and naturally gives special attention to the various

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means by which this may be accomplished. A dishonest would have greater opportunity and greater inducement the ordinary shipper, and might perhaps subject the railways to the exercise of a greater degree of vigilance in protecting itself against this species of fraud; but, as between the case where the consignor is the owner and the case where a consignee is the owner, the argument is the other way. The inducement to fraud appeals to the party who will benefit by it. If the consignee is the owner he only gains by the deceit; but if such deceit is practiced it must be by the shipper, and he, when the consignee is the owner, has no direct inducement to engage in such fraudulent practice. While it might happen that a consignor who misrepresents at the request of his consignee the liability to pay would be less.

It is said in the second place that inasmuch as the carload rate is less than the less than carload these defendants will lose in revenue if compelled to accord the carload rating. Beyond doubt the carrier loses in gross revenue whenever the less than carload rate is applied to the movement of commodities which would otherwise move at the higher less than carload rate. Whether their net revenue is diminished depends upon a variety of considerations. We have been often assured, in some instances as the result of actual tests, that the cost of handling less than carload business was much more in proportion than the difference in rate. However, there is no occasion to consider this aspect of the matter. The question before us is not whether carriers shall grant the carload rating at all, but whether, having allowed it to the consignor, they can refuse it to the consignee. It might increase the revenues of these defendants if they were to give a carload rate to a single individual in each locality and deny it to all others, but this would be no ground for such discrimination.

The point most earnestly insisted upon by the defendants was that they would be subjected to greater annoyance and expense if question arose as to the loss or damage of the property. They urge that two classes of suits may be maintained against a carrier in such case, one upon the contract evidenced by the bill of lading, another in tort for the negligence of the carrier.

The first of these actions must be in the name of the shipper to whom the bill of lading was issued or, perhaps, of his principal if he acted as a mere agent, but it is said that the second may be brought by each and every beneficial owner of the property injured. Upon that assumption it is manifest that in case of the forwarding agent, who consolidates into a single carload numerous shipments of different owners, the carrier might, if loss occurred, be subject to a great number of suits instead of a single suit as in the case of one owner. Such, however, could not be true if the consignee were the owner of the property. In a case like that presented in the statement of facts before us, clearly but one suit could be brought upon the bill of lading and but one suit could be maintained by the beneficial owner. No case can be conceived in which there would be less liability than this. It is conceded by defendants that if one person owned the entire carload of carriages which he had sold to different customers, f. o. b. Columbus, he might ship these at the carload rate to a single consignee for distribution. Here the company would be liable to one suit upon the bill of lading and to as many suits in tort as there were beneficial owners of the property.

It is contended finally that an application of this rule would tend to create discrimination between shippers. A factory located at some point by itself which could not therefore combine its shipments would be at a disadvantage compared with a similar factory located at Columbus where the benefit of combination could be enjoyed. This is undoubtedly true and affords the most serious objection, from our standpoint, to granting the privilege. It must, however, be borne in mind that the granting of a carload rate in any case is a discrimination against the less than carload shipper, who can not avail himself of that rate. We can see no reason why a consignor who has the means to procure or produce a carload of carriages, should be given a carload rating while that rating is denied to a consignee who has the money with which to buy a similar carload. It must be noted further that if the privilege of combination is denied, the inevitable tendency is to drive the small carriage manufacturer out of existence altogether, and center the business in estab-

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lishments which can produce all varieties and all kinds so the purchaser can buy an entire carload at a single factory.

The defendants insisted that they ought not to be required to accord the carload rate to those cases in which the consignee was the owner, because as a practical matter it was impossible for them to determine whether the representation of ownership was true or false; that they dealt with the consignor and could investigate the circumstances as to his ownership, while the consignee was usually at great distance. This contention, specious at first, has little real merit. The carrier delivers as well as receives the property. If the distribution be over the same line, then the identical carrier which receives also makes the delivery and there is no reason to suppose that the question of ownership cannot be as easily determined at the delivering end as at the receiving end of its line. Where, as is usually the case, the transportation is over two or more connecting lines, they still form for the performance of that service a single line. The interest of the delivering carrier is exactly as great as in securing a proper application of this rule as is that of the receiving carrier. Evasions will occur in either case, but they are no more likely to happen when ownership is required in the consignee than when it is required in the consignor.

It may be urged that this rule in its present form, as interpreted by the defendants, permits in effect the same thing which in our judgment should be allowed, since the purchaser appoints some person his agent at the point of shipment for the purpose of receiving the goods from his vendors and consigning them to him. And this is true; but in order to effect it there must be some agent with actual authority to take possession on behalf of the vendee; the title must have actually passed to the vendee before delivery is made to the carrier. This entails on the consignee a certain amount of trouble and expense and forces him to assume a measure of responsibility which otherwise would not. He is himself responsible in this case for the goods for a period of greater or less duration before they are delivered to the carrier, whereas in the other case the goods are the property of his vendor until delivery is made to the carrier, when he then becomes responsible for their safe carriage. One set

objection to the present rule is that its spirit can be avoided by those who know how, while it is obligatory upon the great body of shippers. If the thing can now be effected by those who have knowledge and facility, the rule should be so amended that the whole public can understand and take advantage of it.

One of the questions discussed was as to what proof the carrier might require of ownership in the consignee. No rule of universal application can perhaps be laid down. As was said by the representative of one of the defendant lines, carriers must assume that they are dealing with honest men until they have reason to believe the contrary. It cannot be difficult to adopt such regulations as will protect the carrier without imposing undue hardship upon the shipping public. Any rule of general application should be specified in the tariff itself.

In the opinion of the Commission, the present rule should be so modified as to accord the same rating to consignor and consignee when the condition of ownership, after the property is delivered to the carrier for transportation, is the same. Apparently the carriers would accomplish all they desire if there were substituted in place of notes 2 and 3 the simple statement that the carload rate would only apply in case either consignor or consignee was the actual owner of the property. An order will issue requiring the defendants to cease and desist from refusing to allow the carload rating in case the consignee is the owner of the property when such rating is allowed when the consignor is the owner. Whether the carrier may distinguish between the forwarding agent and the actual owner is not decided.

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THE C. S. BELL COMPANY
v.
BALTIMORE & OHIO SOUTHWESTERN RAILROAD
COMPANY AND NORFOLK & WESTERN RAIL-
WAY COMPANY.

Decided December 2, 1903.

The decision in the *Buckeye Buggy Company v. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, et al.*, ante, 620, applied and followed in the disposition of this case.

C. E. Bell for complainant.

T. W. Reath and *Perkins Barter* for Norfolk & Western Ry. Co.

Edward Barton for Baltimore & Ohio Southwestern R. R. Co.

P. J. Farrell for the Commission.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

This case was heard with the preceding one entitled *Buckeye Buggy Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company, et al.* It involves the same general question and calls for the same relief, but the facts are different and the case itself is instructive as showing the confusion which has arisen in the interpretation by the carriers themselves of the rule as to the combination of carloads at the carload rating, and the discrimination which has resulted.

The complainant company manufactures iron farm bells and various other iron articles at Hillsboro, Ohio. In the early part of this year it sold a considerable quantity of its product to Sommer, Herrmann & Co. of the city of Mexico, Mexico. In

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directing shipment of this purchase, that firm stated it had bought a small quantity of goods from other parties which would be shipped to complainant at Hillsboro; and requested that such goods be shipped in a car with those purchased from complainant, at the carload rate. In due time these goods were received, whereupon the Bell Company placed them in the car with those furnished by it and tendered the car for shipment to Sommer, Herrmann & Co. at Mexico.

Before making formal tender, on January 30, 1903, the Bell Company, in consequence of a suggestion from its shipping clerk that the railway would not receive this combined carload at the carload rate, wrote to the agent of the Baltimore & Ohio Southwestern at Hillsboro, inquiring whether the carload would be received and asking an explicit statement of the reasons for refusing it, if it were to be refused. In answer, the agent under date of January 31, stated: "I beg to advise that as per a late ruling of the C. F. A., if the shipments loaded in this car are not exclusively your property, less than carload rate should apply on aggregated shipments; however, if you will furnish evidence, either by paid invoice or written statement, that these goods were bought at Springfield and are your property, the carload rate will apply; otherwise less than carload rate will apply."

Subsequent correspondence by letter, or by telephone, seems to have taken place between the agent and Mr. Bell, vice-president of that company, which resulted in calling out from the agent under date of February 2 another letter in which he writes: "If you have not actually bought the goods shipped from Springfield and Massillon and made invoice against Sommer, Herrmann & Co. for entire shipment tendered in car, we must assume that you are acting as agent for consignee, and the aggregation of totals in this way is strictly against the rule and we cannot protect carload rate, less than carload rate should apply."

It will be noticed that the Bell Company was in reality acting as the agent of Sommer, Herrmann & Co. in consolidating and shipping this carload. The above letter, instead of suggesting that this might with propriety be done, expressly stated that

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the goods were shipped was the owner of the entire carload and was treated as the agent of the consignee, in which case the law then in effect must apply.

Mr. Bell had received from some source an information to the effect that the goods were permitted at Cincinnati and in February 1900 he traveled to the purpose of ascertaining what the facts were. The result of his investigation is shown in the following outline. The goods were in fact habitually shipped at that point by the intervention of a third additional carrier. The consignee was permitted to procure a power of attorney to some person residing at Cincinnati, usually the shipping clerk of one of the vendors; this shipping clerk was then permitted to receive goods from different parties, combine them into one carload, and ship the carload at the carload rate. This practice was theoretically in strict accordance with the interpretation placed upon notes 2 and 3 as stated in the preceding case. The agent of the consignee, in theory, took possession of the goods before they were delivered to the carrier and the consignee was therefore their owner when such delivery was made. In fact, as we understand the instructions issued to agents holding such power of attorney, the goods were delivered by the various vendors to the railroad company, and by it combined into the carload, 48 hours being allowed within which to complete the delivery.

On February 9, Mr. Bell again addressed the agent of the Baltimore & Ohio Southwestern Company stating what was being done at Cincinnati and that he would insist upon making shipment of the car in question. February 13, the agent informed him by wire, he being then absent from Hillsboro, that the shipment would be received provided he filed power of attorney. This he could not do since it would require a long time to obtain one from his consignee in Mexico; the case was recalled from the Baltimore & Ohio Southwestern and shipment made by the Norfolk & Western which consented, apparently, to send forward the car at the carload rating upon the understanding that such a power of attorney should be afterwards furnished.

As we understand the testimony, the goods bought of the Bel

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Company were sold f. o. b. Hillsboro and became the property of Sommer, Herrmann & Co. when delivered to the carrier for shipment. Those received from Massillon and Springfield were also the property of that company, and were sent to the Bell Company by the consignee's direction for the purpose of being incorporated into this carload. The entire carload when received by the Baltimore & Ohio Southwestern for shipment would, therefore, be the property of the consignee. We have held in the previous case that no distinction can be made between the consignor and the consignee in the application of the carload rating; that when the carload rate is accorded to the consignor, if the owner of an entire carload, the same rate must be accorded to the consignee under like circumstances. Upon that decision this carload was entitled to the carload rating and the defendants had no right to require the appointment of an agent by the consignee who should take possession of these goods and deliver them to the railway company for shipment.

What is especially worthy of notice is the way in which this rule, for which the carriers contend, in fact discriminated between different persons and localities. Mr. Bell notified the Baltimore & Ohio Southwestern that he desired to ship this carload to Sommer, Herrmann & Co. at the carload rate. He was not told that he could do this as the agent of Sommer, Herrmann & Co.; upon the contrary, he was expressly informed, under date of February 2, that if his company were the agent of that company, and not the owner of the entire carload, the less than carload rating would apply. No intimation or suggestion was vouchsafed by the carriers that this shipment could be made until Mr. Bell had been to Cincinnati, ferreted out the manner in which similar shipments were made in that city, and advised the carrier that he was informed of this practice and would insist upon his legal rights. Thereupon, he was first told that by filing a power of attorney, which was clearly impossible at that time, he could make the shipment. March 24, the agent at Hillsboro, continuing the correspondence as to such shipments, stated in a letter to Mr. Bell that he was in receipt of a com-

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munication from the general freight agent of his company touching this matter, from which he quoted the following:

"Since this question arose between the C. S. Bell Company and ourselves there has been a change in the conditions at Cincinnati; in other words, less than carload shipments of machinery, etc., are now accepted at Cincinnati under the following conditions." The agent then goes on to state the exact method which Mr. Bell found in vogue at the time of his original investigation.

The statement that conditions at Cincinnati had changed was not, so far as this case shows, true. The carload in question was tendered for shipment January 30, on February 2 the Bell Company was advised that it could not act as agent for the consignee, on February 13 it was advised that it might. The only change in conditions between February 2 and February 13, or March 24, consisted in the fact that Mr. Bell had ascertained on February 7 what was actually being done at Cincinnati. While the practice there may have been in strict technical compliance with the interpretation put upon notes 2 and 3 by the carriers, it was in fact an evasion of the spirit of those notes and gave to shippers at Cincinnati an advantage not enjoyed at Hillsboro nor at any other point so far as appears. We are of the opinion that if the carriers desired to put in vogue such a practice at Cincinnati, some minute of that fact should have been put upon their published schedules in connection with notes 2 and 3; but we are of the further opinion, as already said, that no distinction should be made between consignee and consignor and the fact that an attempted distinction of this kind has led to discrimination like that revealed by this investigation, is a strong argument against it. Every rule is liable to be evaded as a matter of fact, but a rule should not be so framed that it can be set aside by a technical quibble.

The same order will be issued in this as in the preceding case.

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SAMUEL K. BEHREND

v.

WASHINGTON SOUTHERN RAILWAY COMPANY;
RICHMOND, FREDERICKSBURG & POTOMAC
RAILROAD COMPANY; and SOUTHERN RAIL-
WAY COMPANY.

Decided December 2, 1903.

Complainant was charged a through fare of \$4.65 from W. to M. passing through R. although the sum of the fares from W. to R. and from R. to M. was fifty cents less; but it appeared that the local fares to and from R. applied to and from different stations, and that the extra fifty cents covered a transfer charge. *Held:* That as the complainant was not subjected to unjust discrimination and the reasonableness of the transfer charge was not attacked, the complaint must be dismissed.

Ed. Baxter and Perkins Baxter for Washington Southern Ry. Co., and the Richmond, Fredericksburg & Potomac R. R. Co.

W. A. Henderson for the Southern Ry. Co.

P. J. Farrell for the Commission.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

The complainant in this case is a resident of Washington, D. C.; defendants are common carriers engaged in interstate commerce by railway, and conduct the transportation of passengers and freight between Washington, D. C., and Moseley and other points in the State of Virginia.

Complainant claims that on June 27, 1902, he purchased one, and on the 31st day of July, 1902, he purchased two, passenger
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tickets from the agent of the Washington Southern Railway Company at Washington, D. C., for transportation from Washington, D. C., via Richmond, Virginia, to Moseley, Virginia, for which he paid the sum of \$4.65 each; that the regular rate of passenger fare from Washington, D. C., over defendants' line to Richmond, at that time, was \$3.50, and from Richmond to Moseley, \$0.65, total, \$4.15; that the difference between the amount he paid and \$4.15 was an exorbitant and unreasonable charge, that was not exacted of other passengers, and asks an order of the Commission that defendants be required to refund to him the excess.

The defendants deny that the rates charged complainant were unreasonable or exorbitant, and allege that the same were strictly in accordance with their regularly published tariffs on file with the Commission, and were the regularly scheduled rates exacted of all other passengers over the same route, and ask that the complaint be dismissed.

FINDINGS OF FACT.

The route over which complainant purchased transportation was as follows:

From Washington to the south end of Long Bridge, over the Pennsylvania, Baltimore and Potomac Railway (two miles); from the south end of Long Bridge to Quantico, Virginia, over the Washington Southern Railway (32 miles); from Quantico to Elba Station in Richmond, over the Richmond, Fredericksburg & Potomac Railroad (81 miles); from Elba Station to Union Station or Byrd Street Station, as it is usually called, and the Atlantic Coast Line Bridge, over the Richmond and Petersburg Connection Line (11¼ miles); from the Atlantic Coast Line Bridge, over the Atlantic Coast Line to Belle Isle, to meet the tracks of the Southern Railway (¾ of a mile); and from thence back across the Southern Railway Bridge to the Southern Railway Depot (about two miles), the distance from Elba Station over this route to the Southern Railway Station being a total of about four miles, but generally referred to as five miles; and

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from the Southern Railway Depot over the Southern Railway to Moseley, Virginia (21 miles).

Elba Station is in the residential section of Richmond, and is the point where passengers from Washington to Richmond usually leave the train.

On November 1, 1901, defendants commenced the running of a through train, No. 29, from Washington, D. C., via Richmond, to points south, and continued running the same until November 1, 1902, when the train was discontinued. The Seaboard Air Line and the Atlantic Coast Line both run through trains over the same line from Washington, the Seaboard Air Line leaving the R. F. & P. Railroad at Acca, a station north of Elba, and going over the Seaboard Air Line tracks to Main Street Station, which is used in common by the Seaboard Air Line, and Chesapeake and Ohio roads. The Atlantic Coast Line train connects with the tracks of that line at the north end of James River Bridge, or Byrd Street Station, which are in close proximity to each other. The three stations, namely, Main Street, Byrd Street and the Southern Railway Station, are located in the business portion of Richmond, and within a radius of ten blocks.

It was for transportation on train No. 29 of the Washington Southern Railway, from Washington, D. C., to Moseley, Virginia, that complainant purchased the three passenger tickets above referred to. The testimony does not show conclusively that complainant paid more than \$4.20 for the first ticket, as the agent claims that he was not at that time fully informed as to the rate schedule; but the payment of \$4.65 for the other tickets is established.

While a number of passengers for Richmond got off at Elba, complainant remained in the car until it had passed Byrd Street Station, the Atlantic Coast Line Bridge, and on to Belle Isle and the tracks of the Southern Railway, where a Southern Railway locomotive was attached to the train, and it was backed up to the Southern Railway Station, from which point the complainant was carried to Moseley, Virginia, his destination.

Before this through train, No. 29, was put on, passengers for points on the Southern Railway, south of Richmond, were trans-

ferred by bus, from Elba Station to the Southern Railway Station, for which a charge of fifty cents was exacted from each, or they made the trip between the two stations on a trolley line at a cost of five cents. The Richmond and Petersburg Connection Line, constructed by an independent corporation, made connection from Elba Station to the Southern Railway Station, via the Atlantic Coast Line, and when the transfer service was performed by that line, as on this through train, the R. & P. Connection Line received fifty cents for the service; it was reported to the R. F. & P. Line and paid to the Connection Line. Passengers from Washington on the Atlantic Coast Line train, for points south of Richmond, were not required to pay the fifty cents transfer; the amount, however, was reported and paid to the Richmond and Petersburg Connection Line, but it was prorated and absorbed by the roads conducting the transportation.

The fifty cents exacted of passengers for transfer service was provided for in I. C. C. Tariff, No. 23, I. C. C. No. 22, effective November 1, 1902, and I. C. C. No. 24. Tariff No. 23, above named, provided, under the head of "Transfers and Arbitraries," as follows: "Bus transfers between the R. F. & P. Railroad and the Southern Railway, fifty cents straight, and seventy-five cents round trip. Report to R. F. & P. Railroad." This provision is still in force respecting traffic on the Southern Railway from Washington to points south of Richmond, except short line competitive points, the transfer being conducted by bus since the discontinuance of train No. 29. There is nothing in the tickets purchased by complainant indicating any transfer service or transfer charge. The complainant states he was told by the agent at the time of procuring the tickets that the train would take him to the Southern Railway Depot; but this is denied by the agent. The fact, however, in our view of the case, is immaterial. The conductor was instructed to announce Elba as the Richmond station, but as that was not complainant's destination, and the train was a through train, complainant did not need to leave the car until reaching Moseley, his destination. A number of additional facts appear from the testimony, but the foregoing statement embraces all that are material to the issue.

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CONCLUSIONS.

Complainant alleges that the fifty-cent charge for what is called the transfer by the R. & P. Connection Line, from Elba Station to the Southern Railway Station, is unreasonable and an unjust discrimination, though he regards the \$3.50 rate from Washington to Richmond and the \$0.65 rate from Richmond to Moseley as reasonable and proper.

There does not seem to be any just cause for complaint on the ground of discrimination, the fare being charged and exacted of all persons alike, in accordance with the tariff providing therefor. Nor is this view changed by reason of the fact that the fifty cents is not exacted of passengers from Washington to points south of Richmond, via the Atlantic Coast Line, as the connection with the Atlantic Coast Line is made at the Byrd Street Station; nor because some passengers for Richmond vacated the train at Byrd Street Station instead of Elba Station, as all trains via Richmond and Washington pass through Elba Station to or from Byrd Street Station. In this case the transfer was made over the lines of two separate roads, the Richmond and Petersburg Connection Line and the Atlantic Coast Line, before reaching the Southern Railway Station. Other passengers destined to Richmond are said to have remained in the train until it arrived at the Southern Station, but this was by oversight of the train officials and without the consent of the company.

The reasonableness of a fifty-cent charge for bus transfer is not questioned. The service to complainant and other passengers, for points beyond Richmond carried from Elba Station to the Southern Station, was the same whether performed by bus or by car; and being by the latter method without the passenger being required to leave his seat, was attended with less inconvenience than by bus. The charge for the service, to which the connecting line was entitled, was not excessive, and there does not appear to be any ground for complaint in that respect.

The Commission, therefore, directs that the complaint be dismissed.

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W. H. H. MacLOON

v.

THE BOSTON & MAINE RAILROAD COMPANY; THE
WEST SHORE RAILROAD COMPANY; and THE
WABASH RAILROAD COMPANY.

Decided December 2, 1903.

Complainant was charged a passenger fare from Boston, Maine, to Janesville, Wisconsin, which was \$2.00 greater than the fare he had paid from Janesville to Boston. *Held:* That this was not unjust discrimination and did not, of itself, render the higher rate unreasonable.

E. D. McGowan for Complainant.

Edgar J. Rich for Boston & Maine Railroad Company.

C. N. Trarous for the Wabash Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner:*

The complaint in this case states:

"I. That complainant is a merchant, residing in the city of Janesville, County of Rock, State of Wisconsin.

"II. That defendants are common carriers engaged in the transportation of persons and property by railroad from points in the State of Illinois to points in the State of Massachusetts and other states of the United States, and form a through line or route for such transportation from Chicago in the State of Illinois to Boston in the State of Massachusetts, and as such common carriers are subject to the provisions of the Act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

"III. That on July 25, 1902, complainant purchased a first-

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class, whole fare ticket entitling complainant to transportation from Janesville, Wis., to Boston, Mass., via the Chicago, Milwaukee & St. Paul Railway to Chicago, Ill., thence over the Wabash Railroad to Buffalo, N. Y., thence over the West Shore Railroad to Rotterdam Junction, N. Y., and thence over the Boston & Maine Railroad (Fitchburg Division) to Boston, Mass., for which said ticket said agent charged and collected of complainant the sum of \$21.73, and complainant was carried for such fare from Janesville, Wis., to Boston over said through route via defendants' lines.

"That on August 11, 1902, complainant, desiring to return to Janesville from Boston, applied to the agent of the defendants at the ticket office of the Boston & Maine Railroad at the North Station in the City of Boston for a first-class, whole fare ticket from Boston to Janesville over the same route, via the defendants' lines, by which complainant had come to Boston, except that from Chicago to Janesville the route was over the Chicago & Northwestern Railway, instead of over the Chicago, Milwaukee & St. Paul Railway; but that said agent at Boston charged and collected of complainant the sum of \$23.73 for the westward ticket, being two dollars more for the same service than when going east between the same points, and complainant returned to Janesville over said through route.

"That the first-class passenger fare between Boston and Janesville in each direction is made by adding the local fare between Chicago and Janesville to the regular fare between Chicago and Boston. That the excess charge of two dollars more when going west than when going east arises for the transportation between Boston and Chicago."

The complainant claims that the charge of \$2.00 more for carriage from Boston to Janesville than from Janesville to Boston is excessive and unreasonable, unjustly discriminative, and subjects complainant and other persons to undue and unreasonable prejudice and disadvantage, in violation of sections one, two and three of the Act to regulate commerce.

The complainant asks for an order commanding defendants to cease and desist from said violation, and also for reparation for the alleged excessive charge.

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At the time of the hearing a stipulation was entered into by the parties that the complaint should be heard upon its merits on the allegations contained in the first, second and third paragraphs of the petition, which were admitted by defendants, for the purpose of the hearing, to be true, and also upon the understanding that the rates charged petitioner, as stated in the petition, were the regular schedule rates, and that the distance from Boston to Chicago, over the lines traveled by petitioner, is 1,006 miles.

CONCLUSIONS.

The determination of the issues presented under the foregoing agreement as to the facts, involves two questions:

First. Was the charge of \$2.00 more for the westbound trip than for the eastbound trip an unlawful discrimination?

Second. Was the rate so charged an unreasonable rate?

It was conceded on the hearing that the higher charge did not involve any shorter time for travel; that the accommodations each way were substantially the same; and that the rate between Janesville and Chicago, via the Chicago, Milwaukee & St. Paul Railway, \$2.73, was the same as the rate from Chicago to Janesville, via the Chicago & Northwestern Railway. The complaint, therefore, relates only to rates between Chicago and Boston.

It is not claimed that complainant could have obtained cheaper transportation between Boston and Chicago than was afforded him, and there is no evidence showing that the higher rate for the westbound trip was an unjust discrimination against western travel. This higher rate was a very small fraction over two cents per mile.

The case of *Duncan v. A. T. & S. F. R. R. Co. et al.* 6 I. C. C. Rep. 85, was referred to by counsel for the defendants in support of their contention. This was a case charging unjust discrimination and unreasonable rate on freight charged between Louisville, Ky., and Los Angeles, Cal., for which the published freight charge of \$3.50 eastward was made, while at the same time the published rate over the same line and between the same

points westward was only \$263. In its report determining this case, the Commission said:

"The complainant was not discriminated against in being allowed on his shipments west, to Los Angeles, the lowest available rate, and there was no discrimination against him on his shipments east to Louisville, as he was charged the general rate exacted of all shippers. His complaint in reference to the disparity between the rates charged him on his east and westbound shipments, respectively, is not properly one of unjust discrimination under the third section of the Act to regulate commerce, but rather calls in question the reasonableness of the higher rate. The claim is, in substance that the rate of \$350 eastward is unreasonable in view of the fact that the rate over the same line and between the same points westward is only \$263. This fact alone is relied upon to support the charge. The two rates have no necessary connection or relation, and the fact that a rate over a road or line in one direction is materially higher than the rate on the same class of traffic over the same road or line and between the same points in the opposite direction does not, as in case of hauls over the same line in the same direction, establish *prima facie* the unreasonableness of the higher rate. * * * No evidence as to the unreasonableness of this rate in itself has been offered."

There is practically the same issue presented in the case before us. The Commission does not find from the facts before it that there has been unjust discrimination or that the charge complained of was unreasonable. The complaint is therefore dismissed.

THE DERR MANUFACTURING COMPANY

v.

THE PENNSYLVANIA RAILROAD COMPANY; THE
BALTIMORE & OHIO RAILROAD COMPANY;
THE CHESAPEAKE & OHIO RAILWAY COM-
PANY; AND THE MERCHANTS' & MINERS'
TRANSPORTATION COMPANY.

No. 642.

Decided December 18, 1903.

1. While there are exceptional instances requiring deviation from methods generally employed in constructing freight classification, it is manifest that to require the separation and grading into different classes with varying rates different grades of the same articles of freight would greatly complicate the work and go far to defeat the very purpose of classification, and even then it would be impracticable to apportion with mathematical exactness the burdens of transportation: the best result obtainable in this direction is reasonable and substantial approximation.
2. A cheap grade of brush manufactured and sold by complainant as a blacking dauber is not entitled, upon the facts in this case, to be classified lower than the class to which bristle brushes in general are assigned.

P. J. Farrell, for the Commission.

F. D. McKenney for Defendants.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The only material issue in this case is the classification of iron-handled bristle shoe-blackening daubers in less than carload lots, the complainant insisting that little bulk, little value, a minimum risk of damage in transportation and their great weight entitle them to a classification lower than first class, with

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its attendant rates, that seem to him unjust, unreasonable and excessive in themselves and as compared with the rates on many articles of greater value, greater bulk and less weight, now taking third class rates in less than carload lots.

The facts undisputed are as follows: The complainant is a manufacturer at Baltimore, Maryland, of certain specialties; among these are bristle shoe-blackening daubers, or brushes, having a cast-iron handle with corrugated ferule, the subject of his patent, the bristles being held in place by cement and a wooden plug driven into the ferule and secured with a nail. These the complainant manufactures in three grades, designated respectively as "No. O," "No. 1," and "Rex," only one of which—the cheapest, No. O—need be here considered in detail, since the arguments for a lower classification are strongest for this brush.

The cast-iron handles for his No. O brush or dauber, he secures at present from Cleveland, Ohio, at a cost, with freight, of approximately \$1.10 per gross; the wooden plug or block, with the tin-back cap, about 10 cents more; the bristles approximate 76 cents per gross, making \$1.96 per gross; while the labor, cement, paper boxes for dozen packages, and the wooden case for the five-gross shipping package, bring his total cost to about \$3.25 per gross, at the factory.

The iron handles weigh about 28 pounds to the gross, the bristles about 3 1/10 pounds.

When completed, the dozen in a paper box weigh 2 pounds 9 1/2 ounces.

Five gross of the daubers in their paper boxes weigh a little above 155 pounds, and the wooden case, weighing 30 pounds, brings the weight of his five-gross package to about 185 pounds, occupying a space of 27 1/2 by 17 3/8 by 14 3/8 inches, or about 4 cubic feet.

The first class rate, say to Chicago, is 67 cents per 100 pounds, or about \$1.25 per five-gross case.

This addition of 25 cents per gross freight brings the \$3.25 factory price to \$3.50 per gross delivered in Chicago. His selling price is \$4.00 per gross.

The results are more favorable to the complainant on shipments to shorter distance points where the freight rates are less.

The complainant, besides being a manufacturer of t daubers and other specialties, is also a dealer in wooden other ware, and from his own experience testified—and statements were unchallenged—of many other articles of chandise taking second and third class rates, usually of greater value and bulk than the subject of his contention.

There is no question that, with a handle so heavy as is in the manufacture of this particular brush at so low a p a first class rate carries a charge that is high compared with on some other articles of greater bulk and higher value.

On the other hand, all the general classifications are unif to the extent of rating bristles, and brushes made from bris as first class.

To make an exception of blacking daubers with iron han would afford little relief, since the advantages in distant r kets would be shared with other brushes also having iron han either malleable iron or wire, neither of which is so heavy so cheap as that under consideration. To direct that the cl fication should be changed from first to third class on black daubers with cast-iron handles would, since complainant is manufacturer of these under his patent, secure for his partic brush the lower rate for which he contends, but would not store equilibrium to the great range of comparative rates brushes, with their infinite variety of weights and values. E in his own brushes there would still obtain the discrepancy like rates for greater values, since his Rex brush, with pra cally the same weight iron handle, would, under such a ruli be carried at the same rate as his No. O, though the latter worth, according to his showing, but little more than half much. While there are exceptional instances requiring dev tion from the general practice, it is manifest that to require separation and grading into different classes with varying ra the different grades of the same articles of freight would grea complicate the matter and would go far to defeat the very p pose of classification. Even then it would be impracticable apportion with mathematical exactness the burdens of tra portation. The best that is obtainable in this direction is r sonable and substantial approximation.

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It may be, so far as the facts in this case show, that the carriers might, if they saw fit to do so, reduce the rates on this particular kind of brush without prejudice to others, but, in view of the necessity and purposes of the general classification of traffic, we do not believe the facts warrant requirement by the Commission that this brush be removed from the class to which bristle brushes in general are assigned.

It follows that the complaint will be dismissed.

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IN THE MATTER OF RATES ON IMPORT AND
DOMESTIC TRAFFIC.

February 28, 1903.

REPORT OF THE COMMISSION TO THE SENATE OF THE UNITED
STATES.

KNAPP, *Chairman*:

The Interstate Commerce Commission has the honor to submit the following report in compliance with a resolution of the Senate, dated June 24, 1902, which reads as follows:

Resolved, That the Interstate Commerce Commission be, is hereby, directed to investigate and report to the Senate during the month of December next in such form and to such extent as may be practicable—

1. The rates filed with said Commission by common carriers subject to the Act to Regulate Commerce and now in force on import and domestic traffic of like kind carried from ports of entry in the United States to interior points of destination which show material differences, if any, in favor of through shipments of imported articles and against shipments of like articles originating at such ports of entry.

2. What, if any, kinds or classes of imported articles have actually been transported at any time between January 1 and July 1 of the present year by common carriers subject to the Act to Regulate Commerce at rates from ports of entry in the United States to interior points of destination materially less than the rates contemporaneously charged by such carriers upon the same kinds or classes of articles as domestic shipments from

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such ports of entry to the same interior points of destination; and whether, if it can be ascertained, the rates actually charged upon both the import and domestic traffic were in conformity with the rates in effect thereon as shown in rate schedules filed with said Commission.

3. Show in said report in connection with any such differences in schedule rates in favor of import and against domestic shipments the tariff or customs duties in force under the laws of Congress upon such import traffic carried at any time during the six months' period above specified; and to enable compliance with this requirement the Secretary of the Treasury is hereby directed to furnish the said Commission, upon its application, a statement showing the tariff or customs duties applicable to such import traffic.

Attest.

CHARLES G. BENNETT, *Secretary*.

FIRST.

The rates in force during the first six months of 1902 on import and domestic traffic, respectively, from ports of entry in the United States to interior points of destination, as shown in rate schedules filed with the Commission by carriers subject to the "Act to Regulate Commerce," and the differences between such rates in favor of imported articles are set forth in numbered tables annexed hereto, the first six of which apply to shipments from Portland, Boston, New York, Philadelphia, Baltimore, and Newport News to points in what is known as Central Freight Association territory, which may be generally described as all that territory lying north of the Ohio River and east of the Mississippi River (not including points north of the State of Illinois) and west of a line drawn from Buffalo, N. Y., through Pittsburg, Pa., to Parkersburg, W. Va. There are about 7,000 railroad points in this territory, and as it would be impracticable to show the rates to all of them a few of the most important have been selected. A comparison of the import and domestic rates to the places named will fairly illustrate the differences between such rates to all points in the territory mentioned. Table 7 applies to rates from Montreal, Quebec, and

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Halifax. Tables 8 and 9 relate to shipments from New Orleans to the principal Texas and Colorado points.

There are no tariffs on file with the Commission which provide special rates on import traffic from Pacific Coast ports to interior destinations.

To understand the matters covered by this report it is need to keep in mind the distinction between "class" rates and "commodity" rates, and this is of some importance in connection with paragraph 3 of the above resolution, which relates to the customs duties on imported merchandise. All articles not mentioned by name are included in one or the other of six or more classes to which class rates are applied. Certain specified articles are taken out of the classified list and given special or lower rates respectively, which are called "commodity" rates.

By way of deductions from the annexed tables, and to facilitate their examination, the following statements or comments are here presented:

Speaking generally, rates from New York to the interior may be regarded as standard or basing rates, to which rates from other ports are adjusted or have certain fixed relations.

The *class* rates from the port of New York are the same for both domestic and import traffic, but the adjustment of import rates from other ports differs somewhat from the adjustment of domestic rates from those ports. The class rates from New York to Chicago are the basis for determining the class rates on both kinds of traffic, but from other ports differentials below the New York rate are used at some of those ports on imported merchandise which are not applied on domestic business.

The domestic class rates from Boston and Portland are the same as those from New York, except by certain lines, called differential lines, of which the Grand Trunk from Portland is one and the Central Vermont line from Boston is another. Thus, while the domestic class rates from New York to Chicago are 75, 65, 50, 35, 30, and 25 cents on classes 1 to 6, respectively, and those rates apply also by the standard lines from Boston and Portland, the domestic class rates by the differential lines from Boston and Portland are 70, 61, 47, 33, 28, and 23½ cents respectively.

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But on import traffic from Boston to Chicago by any line these differential line rates are applied instead of the higher standard line rates on domestic traffic. From Portland to Chicago by the Grand Trunk line the differentials on import traffic below the rates from New York are double those applied by it on domestic traffic from Portland to Chicago, and therefore the class rates on import traffic by this line are 65, 57, 44, 31, 26, and 22 cents on the six classes, respectively.

From Philadelphia to Chicago the rates on both domestic and import class traffic are less than those from New York to Chicago by the following differentials: 6 cents on classes 1 and 2 and 2 cents on classes 3, 4, 5, and 6, making the import and domestic rates from Philadelphia to Chicago 69, 59, 48, 33, 28, and 23 cents on classes 1 to 6, respectively.

From Baltimore to Chicago the differentials below New York are 8 cents on classes 1 and 2 and 3 cents on the other four classes, making rates from Baltimore to Chicago on domestic and imported goods as follows: 67, 57, 47, 32, 27, and 22 cents on the six classes, respectively. The class rates on domestic traffic from Newport News and Norfolk differ somewhat from those in force from Baltimore to Western destinations and are referred to further on in this statement.

The foregoing adjustment relates only to all-rail transportation. Rail-and-lake rates lower than the all-rail rates are also in effect to Chicago and other Western destinations from New York, Philadelphia, and Baltimore during the lake-shipping season, which usually opens about May 15 and closes about November 15 in each year. The lake-and-rail rates from New York to Chicago on classes 1 to 6 during the season of 1902 were 59, 51, 40, 29, 25, and 21½ cents per 100 pounds, respectively. From Philadelphia and Baltimore they were less to the extent of the above-stated differentials from those points. From Newport News there is no lake-and-rail route, but the Chesapeake and Ohio line, which has its terminus at that port, applies during the lake-and-rail season the New York lake-and-rail rates on import traffic received by it at Newport News destined to Chicago and other Western points. During the season of closed navigation on the Lakes the rates all rail from Newport News to

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Chicago on import class traffic are the same as those from Baltimore. The domestic class rates from Newport News to Chicago are lower than those from Baltimore. The following summary shows the import and domestic all-rail rates, in cents per 100 pounds, on the different classes from Newport News to Chicago:

	Class—					
	1.	2.	3.	4.	5.	6.
Import rates:						
Nov. 15 to May 15	67	67	47	31	25	22
May 15 to Nov. 15	59	61	40	29	25	21
Domestic rates	59	61	43	29	25	20

It thus appears that from Newport News to Chicago the import class rates are materially higher than the domestic class rates for half the year and nearly the same as the domestic class rates the other half of the year. To Cleveland the domestic class rates from Newport News are somewhat higher throughout the year than the import rates, and to Pittsburg and Buffalo they are considerably higher.

Little or no traffic is imported direct from foreign countries through the port of Norfolk, and no tariff rates from Norfolk on goods imported direct through that port are filed with the Commission. The domestic class rates from Norfolk to Western points are the same as those from Newport News.

The domestic class rates from Montreal, Canada, to Chicago are, in cents per 100 pounds, 66, 58, 45, 31, 26, and 22 cents on the six classes respectively. The import class rates from Montreal to Chicago on the six classes are 54, 47, 37, 27, 23, and 20 cents, respectively. No import class rates are on file from Quebec or Halifax, although the Canadian Pacific uses Halifax as its winter port. The Grand Trunk carries most of its import traffic from Portland, Me., during the winter season. Both roads use Montreal, and Quebec is mentioned in the record as a summer port for import traffic through Canada.

No import class rates are on file from New Orleans, Mobile, or any of the Pacific coast ports.

What is said above applies to class rates. The tables also name commodities and rates thereon from the different ports, and the testimony is that these are the only articles imported

through those ports which take lower than the regular import class rates. As the tables show, these commodity import rates are the same from New York, Boston, and Portland, and the tariffs on file indicate that they apply also from Montreal. The commodity import rates from Philadelphia and Baltimore are 2 and 3 cents respectively, the regular differentials, below New York on all classes lower than second. The commodity import rates from Newport News are the same as those from Baltimore. The domestic rates on the same commodities shown in the tables by the side of the import commodity rates for each port are placed there for comparison, and they are either the domestic class rate or a commodity rate, as the case may be.

The domestic rates shown in the tables for the various commodities named therein are adjusted to New York in substantially the same manner as are the class rates. Some of the tables name articles taking import commodity rates which are not mentioned in tables showing rates from other ports, and this indicates that the class basis of rates applies on those commodities from such other ports. The tables show, however, a few exceptions from the adjustment basis above described, and these are probably due to errors in constructing the tariffs.

No import commodity rates from Pacific coast ports are filed with the Commission. The only import commodity rates on file from New Orleans are those set forth in Tables 8 and 9, and applying to Texas and Colorado points. No import commodity rates are regularly filed and published on traffic imported through Mobile, but the Mobile and Ohio, which has its terminus at that port, notifies the Commission of rates contracted by it on particular shipments of import freight.

Table No. 10 shows domestic and import rates from New York to Chicago on commodities mentioned in the other tables in effect December 31, 1902, and January 1, 1903. This information is not required by the resolution, but the table is inserted for the purpose of showing changes in the commodity rates which became effective on the last-mentioned date. The class rates remain unchanged.

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SECOND.

The second paragraph of the resolution is understood to be for the *actual rates* applied during the first six months of 1902 on import and domestic traffic, respectively, as distinguished from the *published or tariff* rates in force during that period.

For the purpose of obtaining this information the Commission has conducted proceedings of investigation and inquiry at New York, Chicago, Boston, and Washington. A large number of traffic managers and other officials in charge of import traffic and familiar with the conditions under which it is transported were examined orally, and considerable documentary evidence has been obtained.

As above stated, the published rates during the six months in question were, generally speaking, those shown in the annexed tables; and numerous witnesses representing the carriers of imported articles to interior destinations from *North Atlantic ports of entry* testified, without exception, that so far as they knew or believed the published rates have been actually maintained, both on imported and domestic traffic, since January 1902, although some of them admitted that departures from published rates were formerly not infrequent. The Commission has no reason to doubt that these statements are substantially correct.

At the Gulf ports of Mobile and New Orleans a somewhat different condition has existed and still exists. From these ports to points in Central Freight Association territory the principal initial carriers of import traffic are: From Mobile, the Mobile and Ohio Railroad Company; and from New Orleans, the Illinois Central Railroad Company. The former of these companies files with the Commission statements of rates actually charged on import traffic, but as such rates change frequently the statements filed simply represent the different contracts which have been made. A representative of the Mobile and Ohio stated that it is the practice of that company to make *through* rates on import traffic from time to time as competition by other ports seemed to render necessary, and then file with the Commission the inland proportions thereof.

The general freight agent of the Illinois Central Company
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said he endeavored to keep himself informed concerning current rates on import traffic through other ports and then, without reference to published tariffs, made such rates as would enable his company to compete for import business, whenever he believed the rates so made would be remunerative. He also stated that through rates from foreign points of origin via North Atlantic ports to inland destinations are subject to frequent changes, but that he was unable to tell whether or not such changes were wholly due to fluctuations in ocean rates, except that in some instances he had been compelled to compete with through rates by way of Baltimore and Newport News which indicated lower charges than the published inland proportions from those ports. From this it appears that during the six months in question and since that time the published rates have been the actual rates, both on import and domestic traffic, *from the North Atlantic ports above named*, while from the gulf ports of Mobile and New Orleans the inland proportion of through rates is made by the carriers from time to time without reference to their published tariffs on domestic traffic of like character from the same ports. Such inland proportions at some times and on some kinds of import traffic are the same as the published domestic rates, though at other times and on other kinds of traffic they are materially less by some if not all the lines.

THIRD.

The customs duties on the various articles in the commodity list, and on a considerable number of articles in the classified list, are shown in Tables 11 and 12, hereto annexed.

It is very difficult to compare these duties with the differences in rates between import and domestic traffic, because the duties in a large majority of cases are based wholly or partly on *value*, while the rates are based on *weight*. More than this, the rates on each "class" into which the traffic is divided apply to a great many articles of diverse character and widely different value, while even the several "commodity" rates cover a number of grades of the same article on which varying duties are imposed. There is also, in quite numerous instances, a variation

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between the description of an article in the tariffs of the carriers and in the custom laws.

The following illustrations are based upon the customs duties and tariff rates given herewith for the period covered by resolution:

The duty on cement is 8 cents per hundred pounds. The duty on this article from New York to Chicago was 20 cents per hundred pounds, and from Vulcanite, N. J., to Chicago, it was 14 cents. Cement is largely imported through Newport News and the inland tariff rate from that port to Chicago on imported cement was 10 cents. The duty and import rate added amount to 18 cents as against a domestic rate from New York of 10 cents. The testimony was that the through rate from Antwerp and Hamburg via Newport News to Chicago was 56 cents per barrel, or 14 cents per hundred pounds, the same as the domestic rate from Vulcanite, N. J. The disparity to East St. Louis was 1 cent greater in favor of the imported article.

The duty on salt in bulk is 8 cents per hundred pounds. The domestic salt rate from New York to Chicago is 20 cents, and the import rate on that article between the same points is 10 cents. The difference between the rates is within 1 cent of the amount of the duty. Using Newport News as a port of entry from which the import rate is 10 cents, the difference under the domestic rate from New York is 10 cents, or 2 cents more than the duty.

The duty on iron ore is 40 cents per ton. From New York to Chicago the domestic rate was \$4.50 per ton, and the import rate was \$3.60 per ton a difference of 90 cents. The same difference prevailed from Philadelphia, Baltimore, and Newport News.

On salt cake the duty is 6¼ cents per hundred pounds, and the difference between import and domestic rates on that article from New York to Chicago was 5 cents per hundred pounds. The import rate from Newport News to Chicago was 3 cents below that from New York, and as against a domestic shipment from any New York rate point to Chicago the import rate from Newport News favored the imported article to

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extent of 8 cents per hundred pounds, or $1\frac{3}{4}$ cents in excess of the duty.

There is no duty on carbonate of potash. The difference in rates on that article between North Atlantic ports and Chicago was 15 cents in favor of import as against domestic traffic in that commodity. From Newport News such difference exceeded the amount of the inland import rate, which was 12 cents. The domestic rate was 27 cents from Newport News.

Many witnesses were asked why the carriers make such material differences between the rates on import and domestic traffic from ports of entry to interior destinations, and the answers given, though differing in form and fullness of statement, were practically the same in purport. More emphasis was placed by some than by others upon the competition of carriers with each other, and this is undoubtedly a factor of much importance. It is not sufficient, however, to account for or justify the great disparity observed in many cases, and other reasons were assigned which are based on commercial and economic conditions. It was said, among other things, that the amount of traffic which can be exported from this country depends largely upon the amount imported, because in order to induce ocean carriers to come here for exports they must have opportunity to derive some profit from imports, and that this in turn requires rail rates to the interior on various kinds of imported traffic which are lower than a remunerative basis for domestic shipments. This view was quite fully presented by Mr. Lucius Tuttle, president of the Boston and Maine Railroad Company, from whose testimony the following remarks are quoted:

The real reasons why import rates are made lower than domestic rates are the commercial necessities of the country's business. If we were to begin anew establishing domestic and import freight rates, and should appoint a committee to represent all of the great railroad systems doing business in this country—were to wipe the slate clean and start anew to decide how importing should be conducted in the future—the decision would, I think, unanimously favor giving to import traffic a less rate than to domestic traffic, not for the purpose of making a through rate from Europe to destinations in this country less than the

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domestic rate from the port of entry to the same destinations, but for the purpose of equalizing distances on import as well as on export traffic, as has been found necessary in dealing with the general subject of domestic rates. For instance, in making the rate from New York or Boston or Philadelphia to a distant common point in this country there is never an attempt to make a scientific tariff based on tons and miles. To a common Western point Buffalo may pay as high a rate as Boston without resultant discrimination against Buffalo or in favor of Boston. It is a duty of transportation companies to so adjust their freight tariffs that, regardless of distance, producers and consumers in every part of this country shall, to the fullest extent possible have equal access to the markets of all parts of this country and of the world, a result wholly impossible of attainment if freight rates must be constructed upon the scientific principle of tons and miles; and this is the principle that must control in the successful conduct of all import as well as export business.

A further reason: A vital necessity of this country is that we shall become extensive sellers of our goods in all markets of the world; that we shall no longer continue to live solely upon ourselves. Now, if we are to become extensive sellers of our goods in the markets of the world, we must, under the commonest laws of reciprocity of trade, be buyers in those markets. No man and no country can long continue to sell goods in markets where return purchases are not made. If we are to sell our goods in the markets of the world, we must furnish export transportation to those markets; we must supply traffic to ocean lines from the ports of the United States to the ports of Europe. If our laws or the custom of our railroads, either by onerous customs duties and regulations or by excessive freight tariffs, or by both, make it impossible to buy goods in foreign markets and resell them in our markets, then shall we have no import business; and if we have no import business with which to fill the cargo-carrying capacity of our inbound trans-Atlantic ships, then a higher rate must be levied by them on the outbound traffic, or they will become profitless and be of necessity discontinued, and our export traffic and the sale of our products abroad will likewise be proportionately discontinued.

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Therefore, in my opinion, this whole matter of adjusting the relations of import and domestic rates becomes a commercial question, and not one of competition only between the various seaports of this country and their allied transportation lines. It is an unalterable law of trade that transportation tariffs must be so adjusted that salable goods may be moved at the lowest practicable cost to the most distant as well as the near-by markets, and obedience to this law is the actuating spirit that governs in the making of freight rates by all of the great railroad systems and trans-Atlantic lines of the present day.

Our exports consist largely of bulky natural commodities. Although we have made some important invasions of Europe without our manufactured goods, the quantities of these that we are able to send there are not yet sufficiently large to need for their accommodation steamship space in any degree proportionate to that required for the carriage of our natural products; but whatever space these manufactured exports occupy in outgoing steamers increases the obligation to find corresponding quantities of import cargo, if the ocean service is to be profitably continued and expanded. Our outgoing natural products require steamer space greatly in excess of the incoming quantities of foreign goods, and it becomes therefore a commercial necessity that every transportation line leading from each port of entry to the interior of this country do everything in its power to encourage the growth of import business, even to the extent, in emergencies, of joining in through import rates which are of themselves profitless. This is precisely what is being done, under similar conditions, in the transportation of certain kinds of domestic products. The Industrial Commission found that cotton was carried from Memphis to Lowell cheaper than for a much shorter distance from Memphis into North Carolina. What is the reason? Simply the commercial necessity of supplying cotton for the mills at Lowell at prices that will enable them to continue in business and sell their product profitably in competition with other mills having the advantage of nearness to the cotton fields and generally lower cost of operation.

The adjustment of transportation methods and rates as applied to foreign as well as to domestic traffic are to an extraordinary

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nary degree the basis of commercial success or failure in every community; and any attempt to regulate these matters, whether by statute or by custom, which does not provide the vital element of commercial elasticity, so that there shall be reasonable and equitable opportunities for the profitable movements of trade between this country and foreign lands, as well as between the more widely separated portions of our own country, will work incalculable and widespread injury to our whole nation.

I think Congress and the people at large should be brought to comprehend that no matter how much this intricate problem of adjusting the relations of import and domestic freight rates may seem, for the moment, to have narrowed itself to one of competition between seaports and transportation lines, there is involved in it the inestimably larger and more important question whether our great railway systems shall have continued freedom to extend and develop our foreign commerce, so that the United States shall ultimately become a more extensive seller of its manufactured as well as of its natural and food products in all the great marts of the world's trade, or shall retrace its steps in the path of international progress upon which it has so profitably and prosperously entered, and erect a Chinese wall along its sea-coasts, so that nothing produced abroad shall ever come in, with the inevitably resultant corollary that nothing but such of our food products as the rest of the world absolutely needs shall hereafter go out.

This witness was asked what effect it would have upon the port of Boston if the Congress should enact a law providing that import and domestic rates from ports of entry in the United States to interior points of destination should be the same. To this he replied:

I think, in that event, Boston would ultimately have little use for its export wharves, and might finally turn them into vegetable gardens.

Another witness stated that he thought such a law would ultimately benefit New York, although it might injure other ports that are less advantageously situated.

It was shown that the ocean distances to Gulf ports are greater than to North Atlantic ports from foreign points of origin, and it was said that for this reason, and because return cargoes can be more easily obtained at the latter than at the former inland rates must be made lower from the former than from the latter if carriers from the Gulf ports are to participate in hauling either import or export traffic. It was also shown that some of the North Atlantic ports are more fortunately situated than others, on account of differences in ocean distances and in the number of regular lines of steamers plying to and from different ports.

Some two or three years ago, for the purpose of simplifying the work of making rates to be applied on imported articles from North Atlantic ports to the interior, the carriers interested established what is known as the "Import Committee." It is composed of a representative of each of the following lines, namely: The New York Central and Hudson River, the West Shore, the Delaware, Lackawanna and Western, the Lehigh Valley, the Philadelphia and Reading, the Central of New Jersey, the Baltimore and Ohio, the Boston and Maine, the Boston and Albany, the New York, New Haven and Hartford, the Chesapeake and Ohio, the Southern, the Norfolk and Western, the Canadian Pacific, the New York, Ontario, and Western, the Old Dominion Steamship Company, and the Merchants and Miners' Transportation Company. It is the duty of this committee to name rates for the transportation of import traffic from North Atlantic ports to interior points, and it has charge generally of matters pertaining to this description of traffic. It has rules and regulations which the carriers are expected to observe and practice, although as stated by the chairman of the committee, nothing except "good faith" compels them to do so.

Witnesses differed as to the effect of the competition of Canadian roads upon import rates. One said he did not regard this competition of much account; another considered it a matter of importance. At the present time rail carriers to and from the ports of Montreal and Quebec appear to be working in harmony with rail carriers to and from other North Atlantic ports. A representative of the Grand Trunk Railway stated that although this

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road is not represented on the import committee it observes the rates made by that committee and makes corresponding rates on articles imported through Canadian ports and destined to points in the United States. It was also shown that differences between import and domestic rates exist in Canada that are similar to those in force in the United States.

While the rates and rate relations from the various North Atlantic ports have been adjusted as above described, there has not been a similar adjustment as between North Atlantic ports on the one hand and South Atlantic and Gulf ports on the other, although this matter has been the subject of controversy for many years. In this connection the chairman of the import committee said:

There has sprung up a competition for this Western traffic through the gulf ports, and I should not say only Gulf ports. Take it from Brunswick, Ga.—Charleston and Savannah, of course, get some—but Brunswick, Ga., is the port that does the most, I think, south of Newport News; and then you get around in the Gulf of Pensacola, Mobile, Galveston, Sabine Pass, and New Orleans, and every one of them to-day is competing for import business into the Western territory. Now, when you take heavy traffic, if a man is not in a hurry, and frequently he is not, 6d. a ton—I mean to say 6d. a ton on the total cost of carriage; that includes your insurance as well—6d. a ton will turn that traffic whether it is going to Chicago or to San Francisco. With these contentions going on, that is where the South Atlantic ports demanded the right to meet competition; and New York and Boston practically said to them “Go ahead and make the rates, and we will take a differential over.” That situation came about nearly five years ago, and the rates are better maintained to-day than they were then, much better, but the differences still exist between domestic and import traffic.

This witness was asked why so great differences are made between import and domestic rates on crockery, and replied that they are caused by the desire of ocean carriers to obtain crockery for ballast. He explained that in weight crates of crockery average from 1,500 to 1,700 pounds each, and can easily be craned into or out of the hold of a vessel. For similar reasons

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ocean carriers are anxious to secure other heavy traffic, such as cement, salt, plate glass, etc., and it was stated that on account of its desirability for ballast they would sometimes carry such an article as cement free of charge, and have even at times paid for the privilege of carrying it. As a result it occasionally happens that the through rate charged for transporting an article from a foreign point of origin through a port of the United States to an inland destination is less than the rate contemporaneously exacted for transporting a like article of domestic origin from the same port of entry to the same destination.

At the hearing in New York the manager of the Vulcanite-Portland Cement Company stated that the rates on cement to East St. Louis, St. Louis, and Kansas City from Hamburg and Antwerp are less than from Vulcanite, N. J. He also said that labor and coal are much more expensive here than in either Hamburg or Antwerp; that these are the principal items which enter into the cost of manufacturing cement; and that because of the low prices at which foreign cement is sold in this country he felt certain that the differences in rates in favor of the imported article are in many instances sufficient to entirely offset the customs duty thereon. A similar complaint pertaining to certain kinds of plate glass was made at the hearing in Washington by a representative of the Pittsburg Plate Glass Company; and at the hearing in Chicago it was shown by the general freight agent of the Illinois Central Railroad Company that salt has often been shipped from Liverpool through the port of New Orleans to Chicago for a less rate than that contemporaneously in force between New Orleans and Chicago on domestic shipments of that article. However, it was said that such shipments seldom, if ever, originate at New Orleans.

Generally speaking, we find bills of lading applying to imported traffic as follows: One form states a through rate, either according to measurement or weight; another reads "as per agreement," and often as per agreement with a shipper named; the third is simply the inland bill of lading of the carrier in this country. Because of the manner in which these rates are made, it may often happen that the inland carrier does not know the amount of the through rate. The carriers here solicit import

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business through foreign agents. The agent may be an employee of the carrier to whom a regular salary is paid, or, as is often the case, a person engaged in other business who works for such carrier on commission. The commission is said to be 10 per cent of the inland rate on articles paying first, second, third class rates, and 5 per cent on articles paying fourth, fifth, or sixth class rates. It is claimed that no commission is paid on articles carried at commodity rates, but as the solicitor is usually a customs broker or insurance agent the customs fees or insurance premiums he may obtain induce him to solicit the traffic. It was shown that in many instances the American Export Company acts as such agent, and is paid for its services by commissions, as above stated.

Through rates are made either by such agents, by the inland carriers here, or by the ocean carriers. If by the former, they may represent in each instance the result of combining the inland rate with the inland rate, or they may be either more or less than a combination. The agent apparently makes any rate he sees fit and may use his commission for the purpose of offering a lower rate than the combination, but it is said that he must in all cases protect personally the rate named by him, so far, at least, as the inland carrier is concerned. As the ocean rates are often made according to measurement, while it is claimed that inland rates are always applied according to weight, and as in many cases the traffic is not weighed until it reaches a port of entry in the United States, it is evident that the agent has to do some guessing, and can not always be certain that the rate named by him represents the total amount that will be charged by the carrier for transportation.

The ocean carrier is also at liberty to make any through rate it pleases, though according to the testimony the inland carrier must be paid its established and published proportion in each case where the inland proportion has been established and published. Ocean rates are constantly fluctuating, and for this reason whenever the inland carrier wishes to name a thorough rate it must make some definite arrangement with the ocean carrier. In the way much of this import business is done leaves the carrier free to make such thorough rates from time to time as they think fit.

will be to their advantage without reference to how their action may affect dealers in domestic articles of like kinds and classes. Even where through rates are named in bills of lading the rate specified may not correspond with the fact. It was explained that items are often included in the rate named that are not, strictly speaking, a part of the transportation charges, and, where the amount of the rate is not mentioned, it is said that the information is withheld to prevent one agent from finding out what rates are being made by another.

As the business is carried on at present inland carriers are free to make low rates on imported articles without the necessity of making corresponding rates on domestic articles of like kinds and classes; and the traffic manager of the Pennsylvania Railroad Company stated that, in his opinion, if the Congress should enact a law providing that the rates must be the same on both classes of traffic, inland carriers would in many instances make domestic rates that would be lower than those now in force. He said it often happens that rail carriers are requested to make rates on imported articles where they have no domestic traffic of a like kind, and that under such a law these carriers could make a low import rate and a domestic rate to correspond therewith without suffering any diminution in the revenue derived from their domestic traffic, while other carriers which have domestic traffic of a like kind would be compelled to choose between a diminution of the revenue derived therefrom and the loss of such revenue as they might otherwise secure from import traffic.

These comments and explanations, in connection with the tables, set forth the main features of the situation with respect of the rate differences between import and domestic traffic, and show in a general way the methods of inland carriers in transporting import traffic from the various ports of entry to interior destinations. The facts and figures presented are believed to be accurate, and to fairly illustrate the rates and practices to which they relate.

The Commission will be glad to furnish any further information that may be desired, either from data already collected or with the aid of more extended investigation.

All of which is respectfully submitted.

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TABLE 1.—Statement showing import and domestic rates on various commodities from New York, N. Y., to the several points hereinafter shown, in effect June 24, 1902.

[Rates in cents per 100 pounds, unless otherwise shown, C. L.]

COMMODITIES.	FROM NEW YORK, N. Y., TO—														
	Buffalo, N. Y.			Cleveland, Ohio.			Pittsburg, Pa.			Detroit, Mich., Toledo, O., Columbus, Ohio.			Cincinnati, Ohio.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Ammonia, sulphate of.				15	18	3				15	20	5	15	22	7
Asphaltum.							13	14	1						
Bauxing.	18	19	1	18	25	7	18	21	3	18	25	7	18	25	7
Bleach.				15	16	1				15	16	1		15	1
Brimstone, crude, in bulk.				16	18	2				16	20	4	16	22	6
Burlaps.	18	19	1	18	25	7	18	21	3	18	27	9	18	30	12
Castor beans.				20	21	1				20	22	2	20	26	6
Cement.				13	16	3	13	14	1	13	16	3	13	17	4
Clay.				15	16	1				15	16	1	15	17	2
Crockery:															
Common (see note).				18	21	3				18	21	3	18	26	8
English (see note).				16	21	5	16	18	2	16	22	6	16	26	10
Fuller's earth.				15	16	1				15	16	1	15	17	2
Iron pyrites (per gross ton).				207	284	76	207	240	32	247	285	37	247	305	57
Kainit.				15	16	1				15	17	2	15	19	4
Kaolin.				15	16	1				15	16	1	15	17	2
Magnesite, Grecian, in bags or in bulk.													16	17	1
Ore (iron, chromic, or manganese), per ton.	216	240	24	256	320	64	216	336	120	281	351	70	313	382	70
Potash:															
Carbonate of.				15	21	6	15	18	3	15	22	7	15	26	11
Muriate of.				15	16	1	15	18	3	15	17	2	15	19	4
Sulphate of.				15	16	1	15	18	3	15	17	2	15	19	4
Rice, brewers'.										18	20	2	18	22	4
Salt, mineral, in barrels, 30,000; in boxes, sacks, or bulk, 40,000 pounds.				13	16	3	13	14	1	13	16	3	13	17	4
Salt cake.				15	16	1				15	16	1	15	17	2
Soda ash.				15	16	1				15	16	1	15	16	1
Soda:															
Bicarbonate of.				15	16	1				15	16	1	15	17	2
Caustic.				13	16	3				15	16	1	15	16	1
Nitrate.	15	16	1	15	21	6	15	18	3	15	21	6	15	21	6
Sal.				15	16	1				15	16	1	15	16	1
Silicate.				15	16	1				15	16	1	15	16	1
Sulphate of.				15	16	1				15	16	1	15	16	1
Spiegeleisen, ferromanganese, silicon, and pig iron, per ton.				284	320	36	240	403	163	312	351	39	348	382	44
Sulphur, crude, in bulk.				18	18	2				16	20	4	16	20	4

TABLE 1.—Statement showing import and domestic rates on various commodities from New York, N. Y., to the several points hereinafter shown, in effect June 24, 1902—Cont'd.

COMMODITIES.	FROM NEW YORK, N. Y., TO—														
	Indianapo- lis, Ind.			Gr'd Rapids, Mich.			Chicago, Ill. Louisville, Ky.			Peoria, Ill.			E. St. Louis, Ill.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Ammonia, sulphate of.	15	23	8	15	24	9	15	25	10	17	24	11	17	29	12
Asphaltum.	18	19	1	18	19	1	18	20	2	20	22	2	21	23	2
Bagging.	18	25	7	18	25	7	18	25	7	20	23	3	21	23	2
Bleach.	15	17	2	15	17	2	15	18	3	17	20	3	17	21	4
Brimstone, crude, in bulk.	16	23	7	16	24	8	16	25	9	18	23	10	19	29	10
Burlaps.	18	23	15	18	24	16	18	25	17	20	29	19	21	41	20
Castor beans.	20	23	8	20	29	9	20	30	10	22	33	11	23	35	12
Cement.	13	19	6	13	19	6	13	20	7	14	22	8	15	23	8
Clay.	15	19	4	15	19	4	15	20	5	17	22	5	17	23	6
Crockery:															
Common (see note).	18	23	10	18	29	11	18	30	12	20	31	13	21	35	14
English (see note).	16	23	12	16	29	13	16	30	14	18	33	15	19	35	16
Fuller's earth.	15	19	4	15	19	4	15	20	5	17	22	5	17	23	6
Iron pyrites (per gross ton).	247	29	78	247	336	88	247	350	102	272	385	113	287	406	119
Kainit.	15	20	5	15	21	6	15	22	7	17	24	7	17	26	9
Kaolin.	15	19	4	15	19	4	15	20	5	17	22	5	17	23	6
Magnesite, Grecian, in bags or in bulk.	16	19	3	16	19	3	16	20	4	18	22	4	19	23	4
Ore (iron, chromic or manganese) per ton.	335	419	84	346	432	86	360	450	90	396	495	99	418	522	104
Potash:															
Carbonate of.	15	23	13	15	29	14	15	30	15	17	33	16	17	35	18
Muriate of.	15	20	5	15	21	6	15	22	7	17	24	7	17	26	9
Sulphate of.	15	20	5	15	21	6	15	22	7	17	24	7	17	26	9
Rice, brewers.	18	23	5	18	24	6	18	25	7	20	23	8	21	29	8
Salt, mineral, in bar- rels, 30,000; in boxes, sacks, or bulk, 40,000 pounds.	13	19	6	13	19	6	13	20	7	14	22	8	15	23	8
Salt cake.	15	19	4	15	19	4	15	20	5	17	22	5	17	23	6
Soda ash.	15	17	2	15	17	2	15	18	3	17	20	3	17	21	4
Soda:															
Bicarbonate of.	15	19	4	15	19	4	15	20	5	17	22	5	17	23	6
Caustic.	15	17	2	15	17	2	15	18	3	17	20	3	17	21	4
Nitrate.	15	23	13	15	29	14	15	30	15	17	33	16	17	35	18
Sal.	15	17	2	15	17	2	15	18	3	17	20	3	17	21	4
Silicate.	15	17	2	15	17	2	15	18	3	17	20	3	17	21	4
Sulphate of.	15	17	2	15	17	2	15	18	3	17	20	3	17	21	4
Spiegel Eisen, ferroman- ganese, silicon, and pig iron, per ton.	372	419	47	384	432	48	400	450	50	440	495	55	464	522	58
Sulphur, crude, in bulk.	16	23	7	16	24	8	16	25	9	18	23	10	19	29	10

NOTE.—Will include cheap tableware invoiced at prices not exceeding those of English crockery, in crates, although such shipments may be marked as china; also includes English crockery, in packages, other than crates.

Domestic rate on crockery, in boxes or slatted boxes, L. C. L. from New York to Chicago, 65 cents per 100 pounds. Domestic rate on crockery, in crates, barrels, tierces, casks, or hogsheds, L. C. L. from New York to Chicago, 40 cents per 100 pounds. Rates to other points, as shown above, are adjusted to the New York and Chicago basis.

TABLE 2.—Statement showing import and domestic rates on various commodities from Portland, Me. (via Grand Trunk Railway), to the several points herein-after shown, in effect June 24, 1902.

[Rates in cents per 100 pounds, unless otherwise shown.]

COMMODITIES.	FROM PORTLAND, ME., TO—								
	Cincinnati, Ohio.			Indianapolis, Ind.			Grand Rapids, Mich.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Bagging.....	18	22	4	18	22	4	18	22	4
Bleach.....	15	16	1	15	16	1	15	16	1
Brewers' rice.....	18	20	2	18	21	3	18	22	4
Burlaps.....	18	22	4	18	22	4	18	22	4
Cement.....	13	16	3	13	18	5	13	18	5
Clay.....	15	16	1	15	18	3	15	18	3
Crockery (in crates).....	18	24	6	18	26	8	18	27	9
Fuller's earth.....	15	16	1	15	18	3	15	18	3
Grease magnesia (in bulk).....	15	16	1	15	18	3	15	18	3
Kaolin.....	15	16	1	15	18	3	15	18	3
Muriate of potash.....	15	17	2	15	18	3	15	19	4
Salt.....	15	18	3	15	18	3	15	18	3
Salt cake.....	15	18	3	15	18	3	15	18	3
Soda ash.....	15	16	1	15	16	1	15	16	1
Soda:									
Bicarbonate.....	15	17	2	15	18	3	15	19	4
Caustic.....	15	16	1	15	16	1	15	16	1
Nitrate of.....	15	18	3	15	18	3	15	18	3
Sulphate.....	15	16	1	15	16	1	15	16	1
Silicate.....	15	18	3	15	18	3	15	18	3
Sulphur (in bulk).....	15	16	1	15	16	1	15	16	1
Class rates.									
First class.....	55	60	5	60	65	5	62	67	5
Second class.....	49	53	4	52	56	4	54	58	4
15 per cent less than second class.....	42	45	3	44	48	4	46	50	4
Third class.....	38	41	3	41	44	3	42	45	3
20 per cent less than third class.....	30	33	3	33	36	3	34	38	4
Fourth class.....	26	28	2	29	31	2	30	32	2
Fifth class.....	22	24	2	24	26	2	25	27	2
Sixth class.....	19	20	1	20	21	1	21	22	1

TABLE 2.—Statement showing import and domestic rates on various commodities from Portland, Me. (via Grand Trunk Railway), to the several points herein after shown, in effect June 24, 1902—Continued.

COMMODITIES.	FROM PORTLAND, ME., TO—								
	Chicago, Ill., Louisville, Ky.			Peoria, Ill.			East St. Louis, Ill.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Asphaltum	18	19	1	20	21	1	21	22	1
Bagging	18	22	4	20	25	5	21	26	5
Bleach	15	17	2	17	19	2	18	20	2
Brewers' rice	18	23½	5½	20	26½	6½	21	27½	6½
Brimstone (in bulk)	16	17	1	18	19	1	19	20	1
Burlaps	18	22	4	20	25	5	21	26	5
Cement	13	19	6	14½	21	6½	15	22	7
Clay	15	19	4	17	21	4	18	22	4
Crockery (in crates)	10	28	12	20	31	11	21	33	12
Fuller's earth	15	19	4	17	21	4	18	22	4
Grecian magnesite (in bulk)	18	19	3	18	21	3	19	22	3
Kaolin	15	19	4	17	21	4	18	22	4
Muriate of potash	15	20	5	17	22	5	18	24	6
Salt	10	19	9	17	21	4	18	22	4
Salt cake	15	19	4	17	21	4	18	22	4
Soda:									
Ash	15	17	2	17	19	2	18	20	2
Carbonate	15	20	5	17	22	5	18	24	6
Caustic	15	17	2	17	19	2	18	20	2
Nitrate of	15	19	4	17	21	4	18	22	4
Sal	15	17	2	17	19	2	18	20	2
Silicate	15	17	2	17	19	2	18	20	2
Sulphate	15	17	2	17	19	2	18	20	2
Sulphur (in bulk)	16	17	1	18	19	1	19	20	1
Class rates.									
First class	65	70	5	73	78	5	77	82	5
Second class	57	61	4	64	68	4	67	71	4
15 per cent less than second class	48	52	4	54	58	4	57	61	4
Third class	44	47	3	49	52	3	52	55	3
20 per cent less than third class	35	38	3	39	42	3	42	44	2
Fourth class	31	34	2	35	37	2	37	39	2
Fifth class	26	28	2	29	31	2	31	33	2
Sixth class	22	23½	1½	25	26½	1½	26	27½	1½

TABLE 3.—Statement showing import and domestic rates on various commodities from Boston, Mass., and Portland, Me., to points hereinafter shown, in effect June 24, 1902.

[Rates in cents per 100 pounds, unless otherwise shown, C. L.]

COMMODITIES.	FROM BOSTON, MASS., AND PORTLAND, ME., TO—											
	Cleveland, Ohio.			Detroit, Mich., Toledo, O., Columbus, O.			Cincinnati, Ohio.			Indianapolis, Ind.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Asphaltum	18	25	7	18	25	7	18	25	7	18	19	1
Bagging	15	16	1	15	16	1	15	16	1	15	17	2
Bleach	16	18	2	16	18	2	16	18	2	16	18	2
Brewers' rice	16	18	2	16	18	2	16	18	2	16	18	2
Brimstone, in bulk	18	25	7	18	27	9	18	30	12	18	33	15
Burlaps	20	21	1	20	23	3	20	26	6	20	32	12
Castor beans	13	16	3	13	16	3	13	17	4	13	19	6
Cement	15	16	1	15	16	1	15	17	2	15	19	4
Clay	18	21	3	18	23	5	18	26	8	18	32	14
Crockery:	16	21	5	16	23	7	16	26	10	16	32	16
In crates (see note)	15	16	1	15	16	1	15	17	2	15	19	4
English, in crates												
Fuller's earth	16	18	2	16	18	2	16	18	2	16	18	2
Grecian magnesite, in bulk	10	11	1	10	11	1	10	11	1	10	11	1
Iron pyrites, per ton	207	284	77	247	285	37	247	304	57	247	286	77
pounds.	15	16	1	15	16	1	15	19	4	15	20	5
Kalnit.	15	16	1	15	16	1	15	17	2	15	19	4
Kaolin	15	16	1	15	16	1	15	17	2	15	19	4
Muriate of potash	15	16	1	15	17	2	15	19	4	15	20	5
Carbonate of potash	15	21	6	15	23	8	15	26	11	15	28	13
Salt, C. L., minimum weight in barrels, 30,000; in boxes, sacks, or in bulk, 40,000 pounds	13	16	3	13	16	3	13	17	4	13	19	6
Salt cake	15	16	1	15	16	1	15	17	2	15	19	4
Soda ash	15	16	1	15	16	1	15	16	1	15	17	2
Soda:												
Bicarbonate	15	16	1	15	16	1	15	17	2	15	16	1
Caustic	15	16	1	15	16	1	15	16	1	15	17	2
Nitrate	15	21	6	15	23	8	15	26	11	15	28	13
Sal	15	16	1	15	16	1	15	16	1	15	17	2
Silicate	15	16	1	15	16	1	15	16	1	15	17	2
Sulphate	15	16	1	15	16	1	15	16	1	15	17	2
Spiegeleisen, per ton	284	320	36	312	351	39	348	382	44	372	410	47
Sulphate of ammonia	15	16	1	15	16	1	15	17	2	15	16	1
Sulphate of potash	15	16	1	15	17	2	15	19	4	15	20	5
Sulphur, in bulk	14	18	4	16	20	4	16	22	6	16	23	7
Ferro-manganese, per ton	284	320	36	312	351	39	348	382	44	372	410	47
Ferro-silicon, per ton	284	320	36	312	351	39	348	382	44	372	410	47
Pig iron, per ton	284	320	36	312	351	39	348	382	44	372	410	47
Ore, iron, chrome, and manganese, per ton	250	320	64	281	351	70	318	382	79	335	410	84
Class rates.												
First class	50	50	3	51	50	5	50	50	5	50	50	5
Second class	4	46	3	47	51	4	53	57	4	56	60	4
15 per cent less than second class	37	30	3	40	43	3	45	48	3	48	51	3
Third class	33	36	3	36	39	3	41	44	3	44	47	3
20 per cent less than third class	27	29	2	29	31	2	33	35	2	35	38	3
Fourth class	22	25	2	25	27	2	28	30	2	31	33	2
Fifth class	20	21	1	21	24	1	24	26	1	26	28	2
Sixth class	16	18	1	18	20	1	20	22	1	22	24	1

TABLE 3.—Statement showing import and domestic rates on various commodities from Boston, Mass., and Portland, Me., to points hereinafter shown, in effect June 24, 1902.—Continued.

COMMODITIES.	FROM BOSTON, MASS., AND PORTLAND, ME., TO—											
	Grand Rapids, Mich.			Chicago, Ill. Louisville, Ky.			Peoria, Ill.			East St. Louis, Ill.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Asphaltum.....	18	19	1	18	20	2	20	22	2	21	23	2
Baggins.....	18	25	7	18	25	7	20	22	2	21	23	2
Blench.....	15	17	2	15	18	3	17	20	3	21	24	3
Brown rice.....	18	24	6	18	23	5	20	23	3	21	24	3
Brimstone, in bulk.....	16	24	8	16	23	7	18	23	5	19	24	5
Burials.....	18	24	6	18	23	5	20	23	3	21	24	3
Castor beans.....	20	29	9	20	30	10	22	30	8	23	31	8
Cement.....	13	10	3	13	20	7	14	22	8	15	23	8
Clay.....	15	19	4	15	20	5	17	22	5	17	23	6
Crockery:												
In crates (see note).....	18	20	11	18	30	12	20	30	10	21	35	14
English, in crates.....	16	20	13	16	30	14	18	30	12	19	35	16
Fuller's earth.....	15	19	4	15	20	5	17	22	5	17	23	6
Grecian magnesite, in bulk.....	16	19	3	16	20	4	18	22	4	19	23	4
Iron pyrites, per ton 2,240 pounds.....	247	336	889	247	350	102	272	385	113	287	406	119
Kalmit.....	15	21	6	15	22	7	17	24	7	17	26	9
Kaolin.....	15	19	4	15	20	5	17	22	5	17	23	6
Muriate of potash.....	15	21	6	15	22	7	17	24	7	17	26	9
Carbonate of potash.....	15	29	14	15	30	15	17	33	16	17	35	18
Salt, C. L., in 100 lb. weight in barrels, 30,000; in boxes, sacks, or in bulk, 40,000 pounds.....	13	19	6	13	20	7	14	22	8	15	23	8
Salt cake.....	15	19	4	15	20	5	17	22	5	17	23	6
Soda ash.....	15	17	2	15	18	3	17	20	3	17	21	4
Soda:												
Bicarbonate.....	15	19	4	15	20	5	17	22	5	17	23	6
Caustic.....	15	17	2	15	18	3	17	20	3	17	21	4
Nitrate.....	15	29	14	15	30	15	17	34	16	17	35	18
Sal.....	15	17	2	15	18	3	17	20	3	17	21	4
Silicate.....	15	17	2	15	18	3	17	20	3	17	21	4
Sulphate.....	15	17	2	15	18	3	17	20	3	17	21	4
Spices—cinnamon, per ton.....	384	432	48	400	450	50	440	495	55	464	522	58
Sulphate of ammonia.....	15	21	6	15	22	7	17	24	7	17	26	9
Sulphate of potash.....	15	21	6	15	22	7	17	24	7	17	26	9
Sulphur, in bulk.....	16	24	8	16	23	7	18	28	10	19	29	10
Ferro-manganese, per ton.....	384	432	48	400	450	50	440	495	55	464	522	58
Ferro-silicon, per ton.....	384	432	48	400	450	50	440	495	55	464	522	58
Pig iron, per ton.....	384	432	48	400	450	50	440	495	55	464	522	58
Ore, iron, chrome, and manganese, per ton.....	346	432	86	300	450	90	306	495	69	418	522	104
Class rates.												
First class.....	67	72	5	70	75	5	78	83	5	82	87	5
Second class.....	58	63	4	61	66	4	68	73	4	71	76	4
15 per cent less than second class.....	49	53	4	52	55	3	59	61	2	60	64	4
Third class.....	45	48	3	47	50	3	52	55	3	56	59	3
20 per cent less than third class.....	36	38	2	38	40	2	42	44	2	44	46	2
Fourth class.....	32	34	2	33	35	2	37	39	2	39	41	2
Fifth class.....	27	29	2	28	30	2	31	33	2	33	35	2
Sixth class.....	23	24	1	23	25	1	26	28	1	27	29	1

NOTE.—Will include cheap tableware invoiced at prices not exceeding those of English crockery in crates, although such shipments may be marked as china; also includes English crockery in packages other than crates.

9 I. C. C. REP.

TABLE 4.—Statement showing import and domestic rates on various commodities from Philadelphia, Pa., to several points as shown below, in effect June 1902.

[Rates in cents per 100 pounds, unless otherwise shown, C. L.]

COMMODITIES.	FROM PHILADELPHIA, PA., TO—								
	Cleveland, Ohio.			Pittsburg, Pa.			Detroit, Mich. Toledo, Ohio Columbus, Ohio		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of
Ammonia, sulphate of.....	13	16	3	13	13		13	18	
Asphaltum.....				11	12	1			
Bagging.....	16	23	7	16	19	3	16	23	
Bleach.....	13	14	1				13	14	
Brumstone, crude, in bulk.....	14	16	2				14	18	
Burlaps.....	16	23	7	16	19	3	16	25	
Castor beans.....	18	19	1				18	21	
Cement.....	11	14	3	11	12	1	11	14	
Clay.....	13	14	1				13	14	
Crockery:									
Common (see note).....	16	19	3				16	21	
English.....	14	19	5	14	16	2	14	21	
Fuller's earth.....	13	14	1				13	14	
Iron pyrites, per ton.....	167½	244	76½	167½	200	32½	207½	245	
Kainit.....	13	14	1	13			13	15	
Kaolin.....	13	14	1	13			13	14	
Ore, iron, chrome or man- ganese, per ton.....	216	280	64	176	291	115	241	311	
Potash:									
Carbonate of.....	13	19	6	13			13	21	
Muriate of.....	13	14	1	13			13	15	
Sulphate of.....	13	14	1	13			13	15	
Rice, brewer's.....							16	18	
Salt, mineral, in barrels, 30- 000; in boxes, sacks, or bulk, 40,000 pounds.....	11	14	3	11	12	1	11	14	
Salt cake.....	13	14	1	13			13	14	
Soda ash.....	13	14	1				13	14	
Soda:									
Bicarbonate.....	13	14	1				13	14	
Caustic.....	13	14	1				13	14	
Nitrate of.....	13	19	6	13	16	3	13	21	
Sal.....	13	14	1				13	14	
Silicate.....	13	14	1				13	14	
Sulphate.....	13	14	1				13	14	
Spiegel-eisen, ferro-manga- nese, silicon, pig iron, per ton.....	244	280	36	200	358	158	272	311	
Sulphur, crude, in bulk.....	14	16	2	14			14	18	

TABLE 4.—Statement showing import and domestic rates on various commodities from Philadelphia, Pa., to several points as shown below, in effect June 24, 1902—Continued.

COMMODITIES.	FROM PHILADELPHIA, PA., TO—								
	Cincinnati, Ohio.			Indianapolis, Ind.			Grand Rapids, Mich.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Ammonia, sulphate of	13	20	7	13	21	8	13	22	9
Asphaltum	16	25	9	16	17	1	16	17	1
Buysing	13	14	1	13	15	2	13	15	2
Bleach	14	20	6	14	21	7	14	22	8
Brimstone, crude, in bulk	16	28	12	16	31	15	16	32	16
Burlaps	18	24	6	18	26	8	18	27	9
Castor beans	11	15	4	11	17	6	11	17	6
Cement	13	15	2	13	17	4	13	17	4
Clay	16	24	8	16	26	10	16	27	11
Crockery:	14	24	10	14	26	12	14	27	13
Common (see note)	13	15	2	13	17	4	13	17	4
English	13	15	2	13	17	4	13	17	4
Fuller's earth	207½	265	57½	207½	286	78½	207½	296	88½
Iron pyrites, per ton	15	17	2	15	18	3	15	19	4
Kainit	13	15	2	13	17	4	13	17	4
Kaolin	14	15	1	14	17	3	14	17	3
Magnesite, Grecian, in bags	273	352	79	295	370	84	300	392	92
Ore, iron, chromic or manganese, per ton	13	24	11	13	26	13	13	27	14
Potash:	13	17	4	13	18	5	13	19	6
Carbonate of	13	17	4	13	18	5	13	19	6
Muriate of	13	17	4	13	18	5	13	19	6
Sulphate of	16	20	4	16	21	5	16	22	6
Rice, brewers'	11	15	4	11	17	6	11	17	6
Salt, mineral, in barrels, 30, 40, 60 pounds	13	15	2	13	17	4	13	17	4
Salt cake	13	14	1	13	15	2	13	15	2
Soda ash	13	15	2	13	17	4	13	17	4
Soda:	13	14	1	13	15	2	13	15	2
Bicarbonate	13	15	2	13	17	4	13	17	4
Caustic	13	14	1	13	15	2	13	15	2
Nitrate of	13	24	11	13	26	13	13	27	14
Sal	13	14	1	13	15	2	13	15	2
Silicate	13	14	1	13	15	2	13	15	2
Sulphate	13	14	1	13	15	2	13	15	2
Spiegel-eisen, ferro-manganese, silicon, pig iron, per ton	308	352	44	332	379	47	344	392	48
Sulphur, crude, in bulk	14	20	6	14	21	7	14	22	8

TABLE 4.—Statement showing import and domestic rates on various commodities from Philadelphia, Pa., to several points as shown below, in effect June 24, 1902—Continued.

COMMODITIES.	FROM PHILADELPHIA, PA., TO—								
	Chicago, Ill. Louisville, Ky.			Peoria, Ill.			East St. Louis, Ill.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Ammonia, sulphate of.....	13	21	10	15	26	11	15	15	12
Asphaltum.....	16	18	12	18	20	12	19	19	12
Bagging.....	16	23	18	18	24	8	19	19	8
Bleach.....	13	16	3	15	18	3	15	19	4
Brimstone, crude, in bulk.....	14	23	9	16	26	10	17	25	10
Burlaps.....	16	13	17	18	17	19	19	26	20
Castor beans.....	18	28	10	20	31	11	21	21	12
Cement.....	11	18	7	12	20	8	13	21	8
Clay.....	13	18	5	15	20	5	15	21	6
Crockery:									
Common (see note).....	16	28	12	18	31	13	19	23	14
English.....	14	28	14	16	31	15	17	21	16
Fuller's earth.....	13	18	5	15	20	5	15	21	6
Iron pyrites, per ton.....	207	310	102	282	345	113	247	366	119
Kalnit.....	13	20	7	15	22	7	15	24	9
Kaolin.....	13	18	5	15	20	5	15	21	6
Magnesite, Green, in bags or bulk.....	11	18	4	16	20	4	17	21	4
Ore, iron, chrome or man- ganese, per ton.....	320	410	90	356	455	99	378	482	104
Potash:									
Carbonate of.....	13	28	15	15	31	16	15	23	18
Muriate of.....	13	20	7	15	22	7	15	24	9
Sulphate of.....	13	20	7	15	22	7	15	24	9
Rice, brewers'.....	16	23	7	18	25	8	19	25	8
Salt, mineral, in barrels, 30- 400; in 300 sacks, or bulk, 40,000 pounds.....	11	18	7	12	20	8	13	21	8
Salt cake.....	13	18	5	15	20	5	15	21	6
Soda ash.....	13	16	3	15	18	3	15	19	4
Soda:									
Bicarbonate.....	13	18	5	15	20	5	15	21	6
Caustic.....	13	16	3	15	18	3	15	19	4
Nitrate of.....	13	28	15	15	31	16	15	23	18
Sal.....	13	16	3	15	18	3	15	19	4
Silicate.....	13	16	3	15	18	3	15	19	4
Sulphate.....	13	16	3	15	18	3	15	19	4
Spiegeleisen, ferro-manga- nese, silicon, pig iron, per ton.....	330	410	50	400	455	55	424	482	58
Sulphur, crude, in bulk.....	14	23	9	16	26	10	17	27	10

NOTE.—Will include cheap tableware invoiced at prices not exceeding those of English crockery in crates, although such shipments may be marked as "China;" also includes English crockery in packages other than crates.

TABLE 5.—Statement showing import and domestic rates on various commodities from Baltimore, Md., to the several points hereinafter shown, in effect June 24, 1902.

[Rates in cents per 100 pounds, unless otherwise shown, C. L.]

COMMODITIES.	FROM BALTIMORE, MD., TO—								
	Cleveland, Ohio.			Pittsburg, Pa.			Detroit, Mich., Toledo, Ohio, Columbus, Ohio.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Ammonia, sulphate of.....	12	15	3				12	17	5
Asphaltum.....				10	11	1			
Bagging.....	15	22	7	15	18	3	15	22	7
Bleach.....	12	13	1				12	13	1
Brimstone, crude, in bulk.....	13	15	2				13	17	4
Burlaps.....	15	22	7	15	18	3	15	24	9
Castor beans.....	17	18	1				17	20	3
Cement.....	10	13	3	10	11	1	10	13	3
Clay.....	12	13	1				12	13	1
Crockery:									
Common (see note).....	15	18	3				15	20	5
English (see note).....	13	18	5	13	15	2	13	20	7
Fuller's earth.....	12	13	1				12	13	1
Iron pyrites, per ton.....	147½	224	76½	147½	180	32½	147½	225	37½
Kainit.....	12	13	1				12	14	2
Kaolin.....	12	13	1				12	13	1
Magnesite, Grecian, in bags or bulk.....							13	13	
Ore, iron, chrome, or man- ganese, per ton.....	196	260	64	221	269	48	221	291	70
Potash:									
Carbonate of.....	12	18	6				12	20	8
Muriate of.....	12	13	1				12	14	2
Sulphate of.....	12	13	1				12	14	2
Rice, brewers'.....							15	17	2
Salt, mineral, in barrels, 30- 000; in boxes, sacks, or bulk, 40,000 pounds.....	10	13	3	10	11	1	10	13	3
Salt cake.....	12	13	1				12	13	1
Soda ash.....	12	13	1				12	13	1
Soda:									
Bicarbonate.....	12	13	1				12	13	1
Caustic.....	12	13	1				12	13	1
Nitrate of.....	12	18	6	12	15	3	12	20	8
Sal.....	12	13	1				12	13	1
Silicate.....	12	13	1				12	13	1
Sulphate.....	12	13	1				12	13	1
Spiegeleisen, ferro-manga- nese, silicon, and pig iron, per ton.....	224	260	36	180	235	55	252	291	39
Sulphur, crude, in bulk.....	13	15	2				13	17	4

TABLE 5.—Statement showing import and domestic rates on various commodities from Baltimore, Md., to the several points hereinafter shown, in effect June 24, 1902—Continued.

COMMODITIES.	FROM BALTIMORE, MD., TO—								
	Cincinnati, Ohio.			Indianapolis, Ind.			Grand Rapids, Mich.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Ammonia, sulphate of.....	12	19	7	12	20	8	12	21	9
Asphaltum.....	15	22	7	15	16	1	15	16	1
Bagging.....	12	13	1	12	14	2	12	14	2
Bleach.....	12	19	7	12	20	8	12	21	9
Brimstone, crude, in bulk.....	13	19	6	13	20	7	13	21	8
Burlaps.....	15	27	12	15	30	15	15	31	16
Castor beans.....	17	23	6	17	25	8	17	26	9
Cement.....	10	14	4	10	15	5	10	16	6
Clay.....	12	14	2	12	16	4	12	18	6
Crockery:									
Common (see note).....	15	23	8	15	25	10	15	26	11
English (see note).....	13	23	10	13	25	12	13	26	13
Fuller's earth.....	12	14	2	12	16	4	12	18	6
Iron pyrites, per ton.....	187 1/2	245	57 1/2	187 1/2	268	78 1/2	187 1/2	279	89 1/2
Kainit.....	12	16	4	12	17	5	12	18	6
Kaolin.....	12	14	2	12	16	4	12	18	6
Magnesite, Grecian, in bags or bulk.....	13	14	1	13	16	3	13	16	3
Ore, iron, chrome, or manganese, per ton.....	253	332	79	275	359	84	286	372	86
Potash:									
Carbonate of.....	12	23	11	12	25	13	12	26	14
Muriate of.....	12	16	4	12	17	5	12	18	6
Sulphate of.....	12	16	4	12	17	5	12	18	6
Rice, brewers'.....	15	19	4	15	20	5	15	21	6
Salt, mineral, in barrels, 30, 40, or 50 pounds.....	10	14	4	10	16	6	10	18	8
Salt cake.....	12	14	2	12	16	4	12	18	6
Soda ash.....	12	13	1	12	14	2	12	16	4
Soda:									
Bicarbonate.....	12	14	2	12	16	4	12	18	6
Caustic.....	12	13	1	12	14	2	12	16	4
Nitrate of.....	12	23	11	12	25	13	12	26	14
Sal.....	12	13	1	12	14	2	12	16	4
Silicate.....	12	13	1	12	14	2	12	16	4
Sulphate.....	12	13	1	12	14	2	12	16	4
Spiegel Eisen, ferro-manganese, silicon, and pig iron, per ton.....	298	332	34	312	359	47	324	372	48
Sulphur, crude, in bulk.....	13	19	6	13	20	7	13	21	8

TABLE 5.—Statement showing import and domestic rates on various commodities from Baltimore, Md., to the several points hereinafter shown, in effect June 24, 1902—Continued.

COMMODITIES.	FROM BALTIMORE, MD., TO—								
	Chicago, Ill., Louisville, Ky.			Peoria, Ill.			East St. Louis, Ill.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Ammonia, sulphate of.....	12	12	10	14	25	11	14	26	12
Asphaltum.....	15	17	2	17	19	2	18	20	2
Baking.....	15	12	7	17	25	8	18	23	5
Bleach.....	12	15	3	14	17	3	14	18	4
Brimstone, crude, in bulk.....	13	9	15	15	25	10	16	25	10
Burlaps.....	15	22	17	17	36	19	18	38	20
Castor beans.....	17	10	19	30	11	20	22	12	12
Cement.....	10	17	7	11	19	8	12	20	8
Clay.....	12	17	5	14	19	5	14	20	6
Crockery:									
Common (see note).....	15	27	12	17	30	13	18	32	14
English (see note).....	13	27	14	15	30	15	16	32	16
Fuller's earth.....	12	17	5	14	19	5	14	20	6
Iron pyrites, per ton.....	187½	290	102½	212	325	113	227	346	119
Kainit.....	12	19	7	14	21	7	14	23	9
Kaolin.....	12	17	5	14	19	5	14	20	6
Magnesite, Grecian, in bags or bulk.....	13	17	4	15	19	4	16	20	4
Ore, iron, chrome, or man- ganese, per ton.....	300	390	90	336	435	99	358	462	104
Potash:									
Carbonate of.....	12	27	15	14	30	16	14	32	18
Muriate of.....	12	19	7	14	21	7	14	23	9
Sulphate of.....	12	19	7	14	21	7	14	23	9
Rice, brewers'.....	15	22	7	17	25	8	18	26	8
Salt, mineral, in barrels, 30- 000; in boxes, sacks, or bulk, 40,000 pounds.....	10	17	7	11	19	8	12	20	8
Salt cake.....	12	17	5	14	19	5	14	20	6
Soda ash.....	12	15	3	14	17	3	14	18	4
Soda:									
Bicarbonate.....	12	17	5	14	19	5	14	20	6
Caustic.....	12	15	3	14	17	3	14	18	4
Nitrate of.....	12	27	15	14	30	16	14	32	18
Sal.....	12	15	3	14	17	3	14	18	4
Silicate.....	12	15	3	14	17	3	14	18	4
Sulphate.....	12	15	3	14	17	3	14	18	4
Spiegeleisen, ferro-manga- nese, silicon, and pig iron, per ton.....	340	390	50	380	435	55	404	462	58
Sulphur, crude, in bulk.....	13	22	9	15	25	10	16	26	10

NOTE.—Will include cheap tableware invoiced at prices not exceeding those of English crockery in crates, although such shipment may be marked "China;" also includes English crockery in packages other than crates.

9 I. C. C REP.

TABLE 6.—Statement showing import and domestic rates on various commodities from Newport News, Va., to various points shown below, in effect June 24, 1902.

[Rates in cents per 100 pounds, unless otherwise shown.]

COMMODITIES.	FROM NEWPORT NEWS, VA., TO—											
	Cleveland, Ohio.			Detroit, Mich., Toledo, O., Columbus, O.			Cincinnati, Ohio.			Indianapolis, Ind.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Ammonia, sulphate of...	12	16	4	12	17	5	12	18	6	12	18	6
Asphaltum				15	17	2	15	18	3	15	16	1
Bagging and burlaps				12	13	1	12	13	1	12	14	2
Bleach	12	13	1	12	13	1	12	13	1	12	14	2
Brewer's rice	15	16	1	15	17	2	15	18	3	15	18	3
Fireproofing—building tile, per ton	224	259	35	252	291	39	288	493	205	312	515	203
Salt glazed brick, per ton	224	448	224	252	448	196	288	493	205	312	515	203
Brimstone in bulk	13	16	3	13	17	4	13	18	5	13	18	5
Castor beans	17	20	3	17	20	3	17	22	5	17	20	3
Cement	10	13	3	10	13	3	10	14	4	10	16	6
Clay	12	13	1	12	13	1	12	14	2	12	16	4
Coal facings or ground anthracite coal												
Crockery, in crates	15	20	5	15	20	5	15	22	7	15	20	5
Earth paint, in iron, or other, dry, in sacks, barrels, bags, or bulk												
Fuller's earth	12	13	1	12	13	1	12	14	2	12	16	4
Grecian magnesite, in bulk	11	16	5	13	17	4	13	18	5	13	18	5
Iron pyrites, per ton 2,240 pounds	147	224	76	187	381	194	187	288	100	187	400	213
Kainit	12	13	1	12	14	2	12	16	4	12	17	5
Kaolin	12	13	1	12	13	1	12	14	2	12	16	4
Paper:												
Building or roofing, in rolls, bundles, or crates	17	20	3	19	20	1	20	22	2	20	23	3
Printing, n. o. s., in bundles, crates, or boxes	17	20	3	19	20	1	20	22	2	20	23	3
Wrapping, n. o. s., in bundles or crates	17	20	3	19	20	1	20	22	2	20	23	3
Wrapping, straw or manila, in rolls, bundles, or crates	17	20	3	19	20	1	20	22	2	20	23	3
Wrapping, wood pulp, in rolls or bundles	17	20	3	19	20	1	20	22	2	20	23	3
Phosphate, concentrated	13	15	2	14	17	3	16	18	2	17	19	2
Potash, muriate and sulphate	12	13	1	12	14	2	12	16	4	12	17	5
Salt, min. wt. in barrels, 30,000; in boxes, sacks, or bulk, 40,000 pounds	12	13	1	12	13	1	12	14	2	12	16	4
Salt cake	12	13	1	12	13	1	12	14	2	12	16	4
Soda:												
Bicarbonate	12	13	1	12	13	1	12	14	2	12	16	4
Nitrate	12	20	8	12	20	8	12	22	10	12	25	13
Soda ash, soda silicate, sulphate, caustic, and sal	12	13	1	12	13	1	12	13	1	12	14	2
Spiegel Eisen, per ton of 2,240 pounds	224	260	36	252	300	48	288	331	43	312	360	48
Starch	17	20	3	19	20	1	20	22	2	20	23	3
Sulphur, in bulk	13	16	3	13	17	4	13	18	5	13	18	5

TABLE 6.—Statement showing import and domestic rates on various commodities from Newport News, Va., to various points shown below, in effect June 24, 1902—Continued.

COMMODITIES.	FROM NEWPORT NEWS, VA., TO—											
	Grand Rapids, Mich.			Chicago, Ill.			Peoria, Ill.			East St. Louis, Ill.		
	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.	Import.	Domestic.	In favor of import.
Ammonia, sulphate of...	12	19	7	12	20	8	14	23	9	14	24	10
Asphaltum	15	16	1	15	17	2	17	19	2	18	20	2
Bagging and burlaps	15	19	4	15	20	5	17	23	6	18	24	6
Bleach	12	14	2	12	15	3	14	17	3	14	18	4
Brewer's rice	15	19	4	15	20	5	17	23	6	18	24	6
Fireproofing—building												
tile, per ton	324	372	48	340	390	50	380	435	55	404	462	58
Salt glazed brick, per ton	324	537	213	340	560	220	380	627	247	404	672	268
Brimstone, in bulk	13	19	6	13	20	7	15	23	8	16	24	8
Castor Beans	17	24	7	17	25	8	19	28	9	20	30	10
Cement	10	16	6	10	17	7	11	19	8	12	20	8
Clay	12	16	4	12	17	5	14	19	5	14	20	6
Coal facings or ground												
anthracite coal	15	24	9	15	25	10	17	28	11	18	30	12
Crockery, in crates												
Earth paint, in iron or												
other, dry, in sacks,												
barrels, bags, or bulk	12	16	4	12	17	5	14	19	5	14	20	6
Fuller's earth												
Grecian magnesite, in												
bulk	13	19	6	13	20	7	15	23	8	16	24	8
Iron pyrites, per ton 2,240												
pounds	187	425	238	187	340	152	212	515	303	227	538	311
Kainit	12	18	6	12	19	7	14	21	7	14	23	9
Kaolin	12	16	4	12	17	5	14	19	5	14	20	6
Paper:												
Building or roofing,												
in rolls, bundles, or												
crates	20	24	4	22	25	3	25	28	3	26	30	4
Printing, n. o. s., in												
bundles, crates, or	20	24	4	22	25	3	25	28	3	26	30	4
boxes	20	24	4	22	25	3	25	28	3	26	30	4
Wrapping, n. o. s., in												
bundles or crates	20	24	4	22	25	3	25	28	3	26	30	4
Wrapping, straw or												
manila, in rolls,	20	24	4	22	25	3	25	28	3	26	30	4
bundles, or crates	20	24	4	22	25	3	25	28	3	26	30	4
Wrapping, wood pulp,												
in rolls or bundles	20	24	4	22	25	3	25	28	3	26	30	4
Phosphate, concentrated	18	19	1	19	20	1	21	23	2	23	24	1
Potash, muriate and sul-												
phate	12	18	6	12	19	7	14	21	7	14	23	9
Salt, min. wt. in barrels,												
30,000; in boxes, sacks,	12	16	4	12	17	5	14	19	5	14	20	6
or bulk, 40,000 pounds	12	16	4	12	17	5	14	19	5	14	20	6
Salt cake	12	16	4	12	17	5	14	19	5	14	20	6
Soda:												
Bicarbonate	12	16	4	12	17	5	14	19	5	14	20	6
Nitrate	12	24	12	12	25	13	14	28	14	14	30	16
Soda ash, soda silicate,												
sulphate, caustic, and	12	14	2	12	15	3	14	17	3	14	18	4
sal												
Spiegeleisen, per ton of												
2,240 pounds	324			340	390	50	380			404		
Starch	21	24	3	22	25	3	25	28	3	26	30	4
Sulphur, in bulk	13	19	6	13	20	7	15	23	8	16	24	8

TABLE 6.—Statement showing import and domestic rates on various commodities from Newport News, Va., to various points shown below, in effect June 24, 1902—Continued.

CLASS RATES.

CLASSES.	FROM NEWPORT NEWS, VA., TO—									
	Buffalo, N. Y.			Pittsburg, Pa.			Cleveland, Ohio.			
	Import.	Domestic.	In favor of Import.	Import.	Domestic.	In favor of Import.	Import.		Domestic.	In favor of Import.
							Note 1.	Note 2.		
First class.....	39	59	20	37	54½	17½	49	45	54	.....
Second class.....	33	50	17	31	47	16	42	38	47	.....
15 per cent less than second class.....	28	42½	14½	26	40	14	36	.....	40	.....
Third class.....	28	41	13	27	35½	8½	33	33	35½	.....
20 per cent less than third class.....	22	33	11	22	28½	6½	26	.....	28½	.....
Fourth class.....	19	28	9	18	24	6	23	22	24	.....
Fifth class.....	16	24	8	15	20	5	20	18	20	.....
Sixth class.....	13	19	6	12	16	4	17	15	16	.....

CLASSES.	FROM NEWPORT NEWS, VA., TO—										
	Detroit, Mich.			Toledo, Ohio.			Cincinnati, Ohio.			Indianapolis, Ind.	
	Import.		Domestic.	In favor of Import.	Import.	Domestic.	In favor of Import.	Import.	Domestic.	In favor of Import.	In favor of Import.
	Note 1.	Note 2.									
First class.....	51	51	54	.....	51	54	3	57	54	.....	54
Second class.....	44	43	47	.....	43	47	4	49	47	.....	47
15 per cent less than second class.....	37	.....	40	.....	36½	40	3½	.....	.....	.....	.....
Third class.....	34	36	36	.....	36	36	.....	41	36	.....	41
20 per cent less than third class.....	27	.....	29	.....	29	29	.....	.....	.....	.....	.....
Fourth class.....	25	24	24	.....	24	24	.....	27	25	.....	25
Fifth class.....	21	20	.....	.....	20	20	.....	23	23	.....	23
Sixth class.....	18	17	.....	.....	17	17	.....	19	18	.....	18

See note 1 and note 2, page 632.

TABLE 6.—Statement showing import and domestic rates on various commodities from Newport News, Va., to various points shown below, in effect June 24, 1902—Continued.

CLASS RATES—Continued.

CLASSES.	FROM NEWPORT NEWS, VA., TO—											
	Gr'd Rapids, Mich.			Chicago, Ill.			Peoria, Ill.			East St. Louis, Ill.		
	Import.	Domestic.	In favor of import.	Import.			Import.	Domestic.	In favor of import.	Import.		
				Note 1.	Note 2.	In favor of import.				Note 1.	Note 2.	In favor of import.
First class	64	56	...	59	67	59	75	67	...	77	79	71
Second class	54	48	...	51	57	51	64	58	...	66	67	61
15 per cent less than second class												
Third class	45	41	...	40	47	43	52	48	...	51	55	51
20 per cent less than third class												
Fourth class	31	28	...	29	32	29	38	33	...	37	38	35
Fifth class	26	24	...	25	27	25	30	28	...	30	32	30
Sixth class	21	19	...	21	22	20	25	23	...	25	26	24

NOTE 1.—Applicable on import shipments in force from May 15 to November 15 of each year.

NOTE 2.—Applicable on import shipments in force from November 15 to May 15 of each year.

TABLE 7.—Statement showing class rates, import and domestic, from Montreal, Que., Quebec, Que., and Halifax, N. S., to Chicago, Ill.

[Rates in cents per 100 pounds.]

FROM—	TO CHICAGO, ILL.					
	Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 6.
Montreal, Que.:						
Domestic	66	58	45	31	26	22
Import	54	47	37	27	23	20
Quebec, Que.: a						
Domestic	75	63	49	36	31	27
Halifax, N. S.: a						
Domestic	85	75	60	45	38	32

a No import rates on file.

The import commodity rates shown in the preceding statements as applying from New York, Boston, and Portland, to Chicago, Ill., and points in the Middle West, also apply from Montreal, Quebec, to same points.

There being no domestic commodity rates applying on the same commodities covered by the import tariffs, no comparison of import with domestic rates on such commodities has been made from Montreal.

TABLE 8.—Statement showing import and domestic rates on various commodities from New Orleans, La., to Texas common points, in effect June 24, 1902.

[Rates in cents per 100 pounds.]

COMMODITIES.	From New Orleans, La., to Abilene, Bowie, Brownwood, Corpus Christi, Dallas, Denison, Fort Worth, Gainesville, Marshall, Paris, Sherman, Terrell, Texarkana, Weatherford, and Wichita Falls, Tex.					
	Import.		Domestic.		In favor of import.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Ale and porter, in glass, packed, o. r. b.	59	47	87	64	28	17
Beer, in glass, packed	59	26	87	42	28	16
Bags, burlap, gunny, or jute, in bales or bundles, straight or mixed, C. L.	61	47	81	64	20	17
Burlaps, in bales or bundles	61	47	81	64	20	17
Bagging for baling cotton, in bales or rolls	61	21	81	30	20	9
Bleaching powder, n. o. s. (see also Soda)	61	35	81	47	20	12
Chicory, in double bags:						
Ground	61	47	81	64	20	17
Not roasted	78	61	103	81	25	20
China, majolica and porcelain ware, o. r. b., viz.:						
In barrels, boxes, casks, or tierces	87	87	120	120	33	33
In crates	130 1/2	130 1/2	153	153	22 1/2	22 1/2
China clay, in casks	65	19	87	30	22	11
Chloride of zinc	68	47	81	64	13	17
Crockery, o. r. b., released (value not to exceed \$500 per car), viz.:						
In barrels or boxes	78	47	103	64	25	17
In crates, tierces, casks, or hogsheads	65	47	87	64	22	17
Cotton piece goods (as described in note 1, p. 5)	61	61	81	81	20	20
Cyanide of potassium	87	87	120	120	33	33
Drugs, n. o. s., in boxes	87	87	120	120	33	33
Duck, cotton, unbleached, in bales	61	61	81	81	20	20
Dry goods, n. o. s.	87	87	120	120	33	33
Fuller's earth, in casks	61	36	81	48	20	12
Furniture, viz.:						
Iron bedsteads, k. d.	78		103		25	
Brass bedsteads, k. d.	87		120		33	
Glass (common window), boxed, viz.:						
External measurement of package exceeding 86 united inches, o. r.	87	45	120	57	33	12
External measurement of package not exceeding 86 united inches, o. r.	78	45	103	57	25	12
External measurement of package not exceeding 68 united inches, o. r.	61	45	81	57	20	12
Glass, common, viz.: Light or heavy, in crates, casks, or hogsheads, released	78	51	103	57	25	
Groceries, n. o. s., viz.:						
Classified first class in Western classification	87	87	120	120	33	33
Classified second class in Western classification	78	78	103	103	25	25
Classified third class in Western classification	65	65	87	87	22	22
Classified fourth class in Western classification	61	61	81	81	20	20
Hardware	78		103		25	
Iron articles:						
Bar, band, boiler, and rod, straight or mixed, C. L.	61	32	81	44	20	12
Galvanized sheet iron	61	39	81	64	20	26
Jute yarn	87		120		33	
Mineral water, viz.:						
In glass, cans, or jugs, packed	65	32	87	44	22	12
In wood	61	32	81	44	20	12
Paper stock		25		37		12

TABLE 8.—Statement showing import and domestic rates on various commodities from New Orleans, La., to Texas common points, in effect June 24, 1902—Continued.

COMMODITIES.	From New Orleans, La., to Abilene, Bowie, Brownwood, Corpus Christi, Dallas, Denison, Fort Worth, Gainesville, Marshall, Paris, Sherman, Terrell, Texarkana, Weatherford, and Wichita Falls, Tex.					
	Import.		Domestic.		In favor of import.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Pickles:						
In glass, packed, o. r. b.	52	36	103	48	51	12
In barrels, kegs, kits, or casks	52	36	81	48	29	12
Preserves, viz.:						
In glass or stone jars, packed, o. r. b.	65	47	81	44	16	
In tin cans, boxed	61	47	81	44	20	
Rice, in bags, barrels, or tierces, o. r. b.	61	32	81	44	20	12
Sauces, in glass, packed, o. r. b.	55	38	87	64	32	28
Saltpeter	61	47	81	64	20	17
Sheep dip, viz.:						
Liquid or powdered, straight, C. L.	65	36	87	48	22	12
Paste	61	36	81	48	20	12
Soda, viz.:						
Soda ash, in barrels or casks, minimum weight, 30,000 pounds	61	35	81	47	20	12
Caustic, in barrels or casks, minimum weight, 30,000 pounds	61	35	81	64	20	29
Bicarbonate of	65	35	87	64	22	29
Sulphate of copper, in iron-banded casks only	61	47	81	64	20	17
Tin plate, in boxes, released, o. r., wet, rust, or damage	61	47	81	64	20	17
Toys, n. o. s. (except toy drums and trunks), boxed, released	87	87	120	120	33	33
Wine, whisky, brandy, and cordials, viz.:						
In glass, boxed, o. r., released, value limited to 50 cents per gallon	59	59	120	84	61	25
In wood, released	59	59	103	84	44	25

TABLE 9.—Statement showing rates on various commodities, import and domestic, from New Orleans, La., to Denver, Colorado Springs, Pueblo, Trinidad, and intermediate points in Colorado and New Mexico, in effect June 24, 1902.

[Rates in cents per 100 pounds.]

COMMODITIES.	From New Orleans, La., to Denver, Colorado Springs, Pueblo, Trinidad, and intermediate points in Colorado and New Mexico.					
	Import.		Domestic.		In favor of import.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Ale, beer, and porter, in glass, packed, o. r. b.	110	65	125	77	15	12
Bags, burlap, gunny or jute burlap, gunny or jute bagging, straight or mixed, C. L., minimum weight 30,000 pounds	110		125		15	
Bleaching powder, n. o. s.	110	65	125	77	15	12
Cement, C. L., minimum weight 30,000 pounds	84		97		13	
Minimum weight 40,000 pounds		25		35		10

TABLE 9.—Statement showing rates on various commodities, import and domestic, from New Orleans, La., to Denver, Colorado Springs, Pueblo, Trinidad, and intermediate points in Colorado and New Mexico, in effect June 24, 1902—Continued.

COMMODITIES.	From New Orleans, La., to Denver, Colorado Springs, Pueblo, Trinidad, and intermediate points in Colorado and New Mexico.					
	Import.		Domestic.		In favor of import.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Chicory, in double bags.....	84	65	97	77	13	12
China and majolica ware, o. p. b., released, in barrels, boxes, casks, or tierces.....	180		205		25	
China clay, in casks.....	110	65	125	77	15	12
Chloride of zinc.....	84	65	97	77	13	12
Crockery and earthenware, o. p. b., released (value not to exceed \$500 per car), viz.:						
In barrels or boxes.....	148	65	165	77	17	12
In crates, tierces, casks, or hogsheds.....	110	65	125	77	15	12
Cotton piece goods (as described in note 1).....	150	150	205	205	55	55
Cyanide of potassium.....	180	110	205	125	25	15
Denims, straight, C. L., minimum weight 30,000 pounds.....		100		175		15
Duck, cotton, unbleached, in bales, straight C. L., or in mixed C. L., with brown cotton bags and bagging, minimum weight 30,000 pounds.....		82		175		85
Drugs, n. o. s.....	180	180	205	205	25	25
Dry goods, n. o. s., in boxes.....	180	180	205	175	25	
Fuller's earth, in casks.....	84	52	97	62	13	10
Furniture, viz.:						
Brass bedsteads, minimum weight 12,000 pounds.....	180	95	205	110	25	15
Iron bedsteads, minimum weight 20,000 pounds.....	148	82	165	95	17	14
Glass: common window boxed, viz.:						
External measurement of packages exceeding 86 united inches, o. p. b.....	180	65	205	77	25	12
External measurement of packages not exceeding 86 united inches, o. p. b.....	148	65	165	77	17	12
External measurement of packages not exceeding 68 united inches, o. p. b.....	84	65	97	77	13	12
Glass, common viz.:						
Classified first class in Western classification.....	180	180	205	205	25	25
Classified second class in Western classification.....	148	148	165	165	17	17
Classified third class in Western classification.....	110	110	125	125	15	15
Classified fourth class in Western classification.....	84	84	97	97	13	13
Light or heavy, in crates, casks, or hogsheds, released.....	148	84	165	97	17	13
Hardware.....	148	148	165	165	17	17
Iron articles, viz.:						
Angle, bar, rod, band, boiler, tank, and skelp, and boiler plates, straight or mixed, C. L.....	84	65	97	77	13	12
Galvanized sheet iron.....	84	65	97	77	13	12
Jute yarn, in bales, boxes, or hogsheds.....	118	84	165	97	17	13
Mineral waters, viz.:						
In glass, cans, or stone jugs, packed.....	110	30	125	37	15	7
In wood.....	84	30	97	37	13	7
Paper stock.....		45		53		10
Pickles, in tin or in glass, packed or in barrels, kegs, or kits.....	84	65	97	77	13	12

TABLE 9.—Statement showing rates on various commodities, import and domestic, from New Orleans, La., to Denver, Colorado Springs, Pueblo, Trinidad, and intermediate points in Colorado and New Mexico, in effect June 24, 1902—Continued.

COMMODITIES.	From New Orleans, La., to Denver, Colorado Springs, Pueblo, Trinidad, and intermediate points in Colorado and New Mexico.					
	Import.		Domestic.		In favor of import.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Porcelain ware, viz.:						
In barrels, boxes, or kegs	180		205		25	
In casks or hogsheads	148		165		17	
Preserves, viz.:						
In glass or in stone jars, packed, o. r., released	84	65	97	77	13	12
In tin cans, boxed	84	65	97	77	13	12
Rice, in bags, barrels, or tierces, o. r. l., released	84	65	97	77	13	12
Salt peter	84	65	97	77	13	12
Sheep dip, viz.:						
Liquid or powdered, straight, C. L.	110	52	125	63	15	11
Paste	84	52	97	63	13	11
Soda, viz.:						
Soda ash, in barrels or casks, minimum weight 30,000 pounds	84	48	97	55	13	7
Caustic, in barrels or casks, minimum weight 30,000 pounds	84	48	97	55	13	7
Bicarbonate of	84	65	97	77	13	12
Stoneware (not crockery), n. o. s., o. r. b., released value not to exceed \$500 per car, viz.:						
In barrels or boxes	148	62	165	72	17	10
In crates, casks, or hogsheads—						
Weighing 1,000 pounds or less	84	62	97	72	13	10
Weighing over 1,000 pounds	110	62	125	72	15	10
Sulphate of copper (blue vitriol), in iron-bound casks only	84	53	97	65	13	12
Table sauces, in glass or tin, boxed or in bulk, in barrels	110	65	125	77	15	12
Tin plate, minimum weight 30,000 pounds	84	62	97	69	13	7
Toys, n. o. s. (except toy drums), boxed, released	180	180	205	205	25	25
Wine, whisky, brandy, and cordials, viz.:						
In wood, o. r., released value limited to 50 cents per gallon, C. L., minimum weight 24,000 pounds		105		115		10
In wood	148		153		5	
In glass	180		200		20	

TABLE 10.—*Comparison of import and domestic rates from New York, N. Y., to Chicago, Ill., effective December 31 1902-January 1, 1903.*

[Rates in cents per 100 pounds, except those marked *, which are per ton of 2,240 pounds.]

COMMODITIES.	Dec. 31, 1902.				Jan. 1, 1903.			
	Import.		Domestic.		Import.		Domestic.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Ammonia, sulphate of.....		15		25		15		25
Asphaltum, minimum weight, 40,000 pounds.....		18		20		18		20
Bagging.....		18		25		18		20
Beans (castor).....				20		20		20
Bleach.....		15		18		15		25
Brimstone, crude, in bulk.....		16		25		16		25
Burlaps.....		18		25		18		25
Cement, minimum wt. 38,000 pounds, except that when capacity of the car is less the actual capacity of the car will govern, but in no case shall minimum C. L. weight be less than 30,000 pounds.....		13		20		13		20
Clay.....		15		20		15		20
Crockery: a								
Common.....	18	18						
English, in crates.....	16	16			25	25		
English, except in crates, and all German crockery and china, in boxes, slatted boxes, barrels, casks, or hogsheads.....					40	30		
Crockery or earthenware, n. o. s.: b								
In boxes or slatted boxes, minimum wt. 24,000 pounds.....	18	18	65	30	40	30	65	30
In crates, barrels, tierces, casks, or hogsheads, minimum weight 24,000 pounds.....	18	18	40	30	40	30	40	30
In bulk, to be loaded and unloaded by consignor and consignee, minimum wt. 24,000 pounds (rule 5 C to apply upon excess C. L. quantities when in packages).....				30				20
Ferro-manganese.....		*400		*450		*420		*405
Fuller's earth.....		15		20		15		20
Glass, plate, minimum weight 30,000 pounds.....		35		65				
Iron pyrites, minimum 15 gross tons.....		*245		*350		*200		*350
Kaolin.....		15		22		15		100
Kaolin.....		15		20		15		100
Magnesite, Grecian, in bags or in bulk.....		16		20		15		100
Manganese.....		*300		*450		*300		*405
Ore (iron chrome or manganese).....		*300		*500		*300		*405
Pig iron, all kinds.....		*400		*420		*420		*405

TABLE 10.—*Comparison of import and domestic rates from New York, N. Y., to Chicago, Ill., effective December 31, 1902-January 1, 1903—Continued.*

COMMODITIES.	Dec. 31, 1902.				Jan. 1, 1903.			
	Import.		Domestic.		Import.		Domestic.	
	L. C. L.	C. L.	L. C. L.	L. C.	L. C. L.	L. C.	L. C. L.	C. L.
Potash:								
Carbonate of, in casks.....		15		30		15		22
Muriate of.....		15		22		15		22
Sulphate of.....		15				15		22
Rice, brewers'.....		18				18		25
Salt, minimum weight in barrels, 30,000 pounds; in boxes, sacks, bulk, or in mixed C. L., 40,000 pounds.....								
Salt cake.....		13		20		13		20
Soda ash.....		15		20		15		20
Soda:				18		15		18
Bicarbonate.....		15		20		15		20
Caustic.....		15		18		15		18
Nitrate.....		15		30		15		
Sul, silicate, or sulphate.....		15		18		15		18
Spiegeleisen.....		*400		*450		*420		*495
Sulphur, crude, in bulk.....		16		25		16		25

a As described in import tariffs.

b As described in official classification.

c In crates, 25 cents, any quantity.

TABLE NO. 11.—*Customs duties upon articles mentioned in the commodity rate tables.*

Ale, in casks, 20 cents per gallon; in bottles or jugs, 40 cents per gallon; nonalcoholic, unmalted, 20 per cent.

Ammonia, sulphate of, three-tenths of a cent a pound.

Asphaltum:

Manufactures of, 35 per cent.

Cells, 35 per cent.

Crude, not dried or advanced, \$1.50 a ton.

Dried or otherwise advanced, or treated, \$3 a ton.

Epure, \$3 a ton.

Ground or in leaves, 20 per cent.

Limestone rock, containing not over 15 per cent bitumen, 50 cents a ton.

Trinidad, \$1.50 a ton.

Bagging:

Dundee, not suitable for covering cotton, 45 per cent.

Fireproof, exported and returned, free.

For cotton, composed of single yarns of jute, jute butts or hemp, not bleached, dyed, or colored, not over 16 threads square inch, and weighing not less than 15 ounces square yard, six-tenths of a cent per square yard.

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TABLE NO. 11.—*Customs duties upon articles mentioned in the commodity rate tables—Continued.*

Jute for tailors' use, 45 per cent.

Jute press cloth, 45 per cent.

Waste, fit only for manufacture of paper, free.

Bags:

Made from plain woven fabrics of single jute yarns, not dyed, colored, stained, painted, printed, or bleached, and not exceeding 30 threads to the square inch, seven-eighths of a cent a pound and 15 per cent.

American, exported with allowance for drawback and reimported, subject to duty equal to drawback.

Beaded, 60 per cent.

Bead, 35 per cent.

Burlap, seven-eighths of a cent a pound and 15 per cent.

Burlaps, striped, 45 per cent.

Domestic, exported filled and returned empty, to exporter thereof, free.

Domestic, imported by agent of exporter, free.

Game—

Leather, 35 per cent.

Leather and flax, flax chief value, 45 per cent.

Hemp, manufactures of, 45 per cent.

India rubber—

For balloons, 30 per cent.

With tin whistles, 30 per cent.

Jute, striped, 45 per cent.

Paper, 35 per cent.

Silk, 50 per cent.

Beans, castor, 50 pounds to the bushel, 25 cents per bushel.

Bedsteads:

Iron, 45 per cent.

Brass, 45 per cent.

Beer:

In bottles or jugs, 40 cents a gallon: no additional duty on the bottles or jugs.

Otherwise, 20 cents a gallon.

Condensed, 40 per cent.

Peptonized (minimum 25 per cent), 55 cents per pound.

Bleach:

Bleaching liquid, 25 per cent.

Bleaching powder, one-fifth of a cent a pound, or 20 per cent.

Brandy, \$2.25 a gallon.

Brick, soft glazed, 45 per cent.

Brimstone, crude, free.

Burlap:

Plain woven of single jute yarns, not exceeding 60 inches in width, weighing not less than 6 ounces per square yard and not exceeding 30

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TABLE NO. 11.—*Customs duties upon articles mentioned in the commodity rate tables.*—Continued.

threads per square inch, five-eighths of a cent per pound and 15 per cent; exceeding 30 and not exceeding 55, threads per square inch, seven-eighths of a cent a pound and 15 per cent.
Bags or sacks made from plain woven fabrics of single jute yarn not dyed, colored, stained, painted, printed, or bleached, and not exceeding 30 threads per square inch, seven-eighths of a cent a pound and 15 per cent.
Bagging for cotton composed of single jute yarns not bleached, dyed, colored, stained, painted, or printed, not exceeding 16 threads per square inch and weighing not less than 15 ounces per square yard; six-tenths of a cent per square yard.
Black, 45 per cent.
Crash, 45 per cent.
Jute press cloth, 45 per cent.
Manufactured in part of flax, 45 per cent.
Starcked buckram, 45 per cent.
Tubing, 45 per cent.
Cement:
Bicycle, 20 per cent.
Fire, 20 per cent.
Furnace, 20 per cent.
India rubber, 20 per cent.
Roman, Portland, and other hydraulic, in packages, including weight of package, 8 cents per 100 pounds.
In bulk, 7 cents per 100 pounds.
Not specifically provided for, 20 per cent.
Chicory, ground, 2½ cents per pound.
China:
Balls, for sign work, plain, 55 per cent.
Clock cases, with or without movements, decorated, 60 per cent; plain white, 55 per cent.
Dolls and doll heads, 35 per cent.
Plaques—
Decorated, 60 per cent.
Plain white, 55 per cent.
Toys and tea sets, decorated, 60 per cent.
Toys and tea sets, plain white, 55 per cent.
Vases, decorated, 60 per cent; plain white, 55 per cent.
Clay, including kaolin, \$1 to \$2.50 per ton: modeling clay, 20 per cent; common blue clay, free.
Coal facings not specifically provided for.
Coal, anthracite, free.
Copper, sulphate, one-half of a cent per pound.
Cordials, \$2.25 a gallon.
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TABLE NO. 11.—*Customs duties upon articles mentioned in the commodity rate tables—Continued.*

Cotton piece goods, duty depends upon number of threads per square inch, whether bleached, dyed, colored, stained, painted, or printed, and also upon value.

Crockery, decorated, 60 per cent; plain, 55 per cent.

Denims straight, as cotton cloth.

Duck:

Cotton, 35 per cent.

Crown cotton, not specifically provided for.

Earth, fullers' unwrought and unmanufactured, \$1.50 a ton; wrought and manufactured, \$3 a ton.

Earthenware, brown, common, 25 per cent. Articles not specifically provided for: Decorated, 60 per cent; plain white, 55 per cent. Numerous other kinds of earthenware are specified.

Ferro-manganese, \$4 a ton.

Glass:

Common window—

Not exceeding 10 by 15 inches square, 1½ cents a pound.

Exceeding 10 by 15, not exceeding 16 by 24 inches square 1½ cents a pound.

Exceeding 16 by 24, not exceeding 24 by 30 inches square, 2½ cents a pound.

Exceeding 24 by 30, not exceeding 24 by 36 inches square, 2½ cents a pound.

Exceeding 24 by 36, not exceeding 30 by 40 inches square, 3½ cents a pound.

Exceeding 30 by 40, not exceeding 40 by 60 inches square, 3½ cents a pound.

Exceeding 40 by 60 inches square, 4½ cents a pound.

If imported in boxes, shall contain 50 square feet, as nearly as sizes will permit, and the duty shall be computed thereon according to the actual weight of glass.

Plate, fluted, rolled, ribbed, or rough, or the same containing a wire netting within itself—

Not exceeding 16 by 24 square inches, three-fourths of a cent a square foot.

Exceeding 16 by 24, not exceeding 24 by 30 inches square, 1½ cents a square foot.

Exceeding 24 by 30 inches square, 1½ cents a square foot.

If weighing over 100 pounds per 100 square feet, it shall pay an additional duty on the excess at the same rate herein imposed; if ground, smoothed, or otherwise obscured, pay same rate of duty as cast polished plate glass unsilvered.

Plate, cast, polished, finished, or unfinished, and unsilvered—

Not exceeding 16 by 24 inches square, 8 cents a square foot.

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TABLE NO. 11.—*Customs duties upon articles mentioned in the commodity rate tables—Continued.*

Exceeding 16 by 24, not exceeding 24 by 30 inches square, 10 cents a square foot.
Exceeding 24 by 30, not exceeding 24 by 60 inches square, 22½ cents a square foot.
Exceeding 24 by 60 inches square, 35 cents a square foot.
Plate, cast, polished, silvered, and looking-glass plates exceeding 144 square inches—
Not exceeding 16 by 24 inches square, 11 cents a square foot.
Exceeding 16 by 24, not exceeding 24 by 30 inches square, 13 cents a square foot.
Exceeding 24 by 30, not exceeding 24 by 60 inches square, 25 cents a square foot.
Exceeding 24 by 60 inches square, 38 cents a square foot.
Plate and looking-glass plate, silvered, when framed, shall not pay a less rate of duty than that imposed on similar glass not framed, but shall pay in addition the duty upon said frames.
Plate, cast, polished, silvered, or unsilvered, when bent, ground, obscured, frosted, sanded, enameled, beveled, etched, embossed, engraved, flashed, stained, colored, painted, or otherwise ornamented or decorated, shall pay in addition to the rates chargeable thereon 5 per cent.
Gunny bags, seven-eighths of a cent per pound and 15 per cent.
Gunny cloth, composed in whole or in part of hemp, flax, jute, or jute butts, not bleached, not exceeding 16 threads to the square inch, weighing not less than 15 ounces per square yard, six-tenths of a cent per square yard.
Iron:
Pig, \$4 a ton.
Boiler, plate, not thinner than No. 10 wire gauge, sheared or un-sheared—
Valued at 1 cent per pound or less, five-tenths of a cent per pound.
Above 1 cent and not above 2 cents, six-tenths of a cent per pound.
Above 2 cents and not above 4 cents per pound, 1 cent per pound.
Valued at over 4 cents per pound, 25 per cent.
Boiler, plate, thinner than No. 10 wire gauge shall pay as iron or steel sheets.
Scrap, \$4 a ton.
Russian sheet, no specific provision for.
Pyrites, containing in excess of 25 per cent sulphur, free.
Ironware, manufactures of iron, not otherwise provided for, 45 per cent.
Jute, free.
Jute, dyed, 45 per cent.
Kainit, free.
Kaolin:
Ball clay, as clay unwrought, \$1 per ton.

TABLE NO. 11.—*Customs duties upon articles mentioned in the commodity rate tables.*—Continued.

Cornish stone, as crude mineral, free.

Kiln dried, for clearing wines, 20 per cent.

China clay, \$2.50 per ton.

Magnesite, Grecian:

Magnesite—

Crude, free.

Calcined and ground as cement, 20 per cent.

Ore:

Iron, 40 cents a ton.

Chrome, free.

Manganese, free.

Paint:

Ocher and ochery earths, crude or not powdered, washed or pulverized, one-eighth of a cent per pound; if powdered, washed, or pulverized, three-eighths of a cent per pound; if ground in oil or water 1½ cents per pound.

Sienna and sienna earths, crude, not powdered, washed, or pulverized, one-eighth of a cent per pound; if powdered, washed, or pulverized, three-eighths of a cent per pound; ground in oil or water, 1½ cents per pound.

Umber and umber earths, crude, not powdered, washed, or pulverized, one-eighth of a cent a pound; if powdered, washed, or pulverized, three-eighths of a cent per pound; ground in oil or water, 1½ cents per pound.

Paper stock:

Fit only for such use, free.

Flax card waste, free.

Jute waste, free.

Linen thread waste, free.

Linen waste, free.

Rag pulp, cotton, chief value, 45 per cent.

Tow, free.

Spruce, cull deals, \$1 a thousand feet.

Wood, free.

Paper:

Wall, 25 per cent.

Surface coated, not specifically provided for, 2½ cents a pound and 15 per cent if printed, or wholly or partly covered with metal or its solution, or with gelatine or flock, 3 cents a pound and 20 per cent.

Phosphate, concentrated, not specifically provided for.

Pickles of all kinds, not specifically provided for, 40 per cent.

Plate:

Tin or sheets, iron or steel, or taggers' iron or steel, coated with tin or

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TABLE NO. 11.—*Customs duties upon articles mentioned in the commodity rate tables.*—Continued.

lead, or with a mixture of which these metals or either of them is a component part, by the dipping or any other process, and commercially known as tin plates, terne plates, and taggers' tin, 1½ cents per pound.
Tin, nickel plated, 1½ cents per pound.
Porter, in bottles or jugs, 40 cents per gallon; no additional duty on coverings; otherwise than in bottles or jugs, 20 cents per gallon.
Potash:
Carbonate of, free.
Muriate of, free.
Sulphate of, free.
Potassium, cyanide, 12½ per cent.
Preserves, 1 cent per pound and 35 per cent.
Proofing, fire, not specifically provided for
Rice, brewers', no specific provision for.
Salt:
In bags, sacks, barrels, or other packages, 12 cents per 100 pounds.
In bulk, 8 cents per 100 pounds.
Salt cake, \$1.25 per ton.
Saltpeter:
Crude, free.
Refined or partly refined, ½ cent per pound.
Sauces:
Apple, 1 cent per pound and 35 per cent.
French mustard, 10 cents per pound.
Other sauces, 30 to 40 per cent.
Sheep dip, liquid, powdered, or paste, free.
Silicon, not specifically provided for.
Soda:
Ash, three-eighths of a cent per pound.
Bicarbonate of, three-fourths of a cent per pound.
Caustic, three-fourths of a cent per pound.
Nitrate, free.
Sal, two-tenths of a cent per pound.
Silicate, one-half cent per pound.
Sulphate, \$1.25 per ton.
Spiegeleisen, \$4 per ton.
Starch, 1½ cents per pound.
Stoneware:
Common brown, 25 per cent.
Decorated, 60 per cent.
Plain white, 55 per cent.
Sulphur, crude, free.
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TABLE NO. 11.—*Customs duties upon articles mentioned in the commodity rate tables.*—Continued.**Tile:**

Valued not over 40 cents per square foot, 8 cents per square foot.
Over 40 cents per square foot, 10 cents per square foot and 25 per cent.
Hard bodied, plain, unglazed, 4 cents per square foot.
Slate, 20 per cent.

Toys:

Dolls, doll heads, toy marbles of whatever materials composed, and all other toys not composed of rubber, china, porcelain, parian, bisque, earthen or stone ware, and not specifically provided for, 35 per cent.
Composed of bisque, china, crockeryware, earthenware, parian, porcelain or stoneware, plain white, 55 per cent; if decorated, 60 per cent.

Waters, mineral, all imitations of natural mineral waters and all artificial mineral waters not specifically provided for in green or colored glass bottles.

Containing not more than 1 pint, 20 cents per dozen.

Containing over 1 pint, not over 1 quart, 30 cents per dozen.

No additional duty on the bottles.

Otherwise than as above specified, 24 cents per gallon. Additional duty on coverings.

Whisky, \$2.25 per gallon.

Wine:

Chinese, \$2.25 per gallon.

Champagne and all other sparkling wines, in bottles—

Containing each not more than 1 quart and more than 1 pint, \$8 per dozen.

Containing not more than 1 pint and more than one-half pint, \$4 a dozen.

Containing one-half pint each or less, \$2 a dozen.

In bottles or other vessels containing more than 1 quart each, in addition to \$8 a dozen bottles on the quantity in excess of 1 quart, \$2.50 per gallon, but no additional duty on the bottles.

Yarn, jute, single, not finer than 5 lea or number, 1 cent per pound and 10 per cent; finer than 5 lea or number, 35 per cent.

Zinc, chloride, 1 cent per pound; in solution, 25 per cent.

TABLE 12.—Customs duties upon articles mentioned in testimony which take class rates, with the classification of such articles in less than carload and carload quantities under the official classification.

ARTICLES.	CUSTOMS DUTIES.	Classification.	
		L. C. L.	C. L.
Acid	Acetic, 1.047 specific gravity and under, three-fourths of a cent per hundred pounds; over 1.047 specific gravity, 2 cents per pound; boracic, 5 cents per pound; chromic, 3 cents per pound; citric, 7 cents per pound; gallic, 10 cents per pound; lactic, 3 cents per pound; salicylic, 10 cents per pound; n. s. p. f. or oil of vitriol, one-fourth cent per pound; tannic, 50 cents per pound; tartaric, 7 cents per pound.		
Acetic, liquid, in barrels or iron drums.		3	5
Boracic, chromic, citric, gallic, salicylic, n. o. s.—			
Dry—			
In boxes		2	2
In kegs, barrels, or casks		3	4
Liquid—			
In glass packed in boxes or barrels (C. L. minimum weight, 20,000 pounds).		1	3
In carboys (C. L. minimum weight, 24,000 pounds).		1	5
In iron drums		(a)	5
In tank cars to be furnished by consignors (minimum weight, maximum capacity tank, empty tanks returned free).			5
Lactic, in kegs or barrels		3	5
Tannic, in barrels		1	5
Tartaric:			
In boxes		2	
In kegs, barrels, or casks		3	4
Almonds	Not shelled, 4 cents per pound; shelled, 6 cents per pound; bitter, not shelled, 4 cents per pound; bitter, shelled, 6 cents per pound.		
Nuts, edible, n. o. s.—			
In shell—			
In single bags (C. L. minimum weight, 24,000 pounds).		2	4
In double bags or boxes (C. L. minimum weight, 24,000 pounds).		2	4
In barrels or casks (C. L. minimum weight, 24,000 pounds).		3	4
Shelled		1	1
Books	Children's lithographed, weighing not over 24 ounces each, 8 cents a pound.	1	2
Chocolate	Valued not over 15 cents a pound, 2½ cents a pound.	2	3
Corks:			
Over three-fourths inch diameter at larger end.	15 cents a pound.	1	1
Three-fourths inch and less in diameter at larger end.	25 cents a pound.	1	1

a Rule 26, 20 per cent less than third class.

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TABLE 12.—Customs duties upon articles mentioned in testimony which take class rates, with the classification of such articles in less than carload and carload quantities under the official classification—Continued.

ARTICLES.	CUSTOMS DUTIES.	Classification.	
		L. C. L.	C. L.
Crackers, fire.....	Including weight of wrappers, 8 cents per pound.	2	4
Creosote, wine of	55 cents per pound.	(a)	5
Currants, Zante	2 cents a pound.	3	4
Dates	One hal. cent a pound.	2	4
Fertilizer material	Sulphate of ammonia, three-tenths of a cent a pound.	4	6
Filberts	Unshelled, 3 cents a pound; shelled, 5 cents a pound.		
Classification—			
Nuts, edible, n. o. s.—			
In shell—			
In single bags (C. L. minimum weight, 24,000 pounds).		1	4
In double bags or boxes (C. L. minimum weight, 24,000 pounds).		2	4
In barrels or casks (C. L. minimum weight, 24,000 pounds).		3	4
Shelled.....		1	1
Fish, dried and salted.....	Three-fourths of a cent a pound.	5	5
Glycerine.....	Crude, 1 cent a pound; refined, 3 cents a pound.	3	4
Hemp.....	\$20 a ton.	(a)	5
Hops.....	12 cents a pound.	1	2
Lead, red	2½ cents a pound.	4	5
Linen:			
Hydraulic hose.....	20 cents a pound.	1	1
Threads, twines, or cords.....	Made from yarn not finer than 5 lea or number, 13 cents a pound; if made from yarn finer than 5 lea or number, additional for each lea or number in excess of 5, three-fourths of a cent a pound.	1	1
Yarns	Single in the gray, not finer than 8 lea or number, 7 cents a pound.	1	1
Macaroni	14 cents a pound.	2	5
Prunes	2 cents a pound.	3	4
Pumice stone:			
Manufactured wholly or in part.....	\$6 per ton.	(a)	5
Artificial	do.	(a)	5
Powdered	do.	(a)	5
Rags, wool:			
In bales	10 cents per pound.	5	5
In sacks or crates	do.	2	11
Rope:			
Wire, with hemp core.....	Highest rate assessable on wire used and in addition 1 cent per pound.	(a)	5
Wire	do.	(a)	5
Seeds, rice.....	1 cent per pound.	4	6
Sisal grass or sun cables, cordage and twine made of, excepting binding twine	do.	3	4
Soap	Castile, 1½ cents per pound; fancy, perfumed, and all descriptions of toilet soap, including so-called medicinal or medicated soaps, 15 cents per pound.	(a)	5
Steel:			
Sheets			
Cleaned by acids or by any other material or process.	In addition to rate on steel sheets two-tenths of 1 cent per pound.		3

a Rule 26, 20 per cent less than third class.

9 I. C. C. REP.

TABLE 12.—*Customs duties upon articles mentioned in testimony which take class rates, with the classification of such articles in less than carload and carload quantities under the official classification—Continued.*

ARTICLES.	CUSTOMS DUTIES.	Classification.	
		L. C. L.	C. L.
Steel:			
Sheets—Continued.			
Common or black, of whatever dimensions, value 3 cents per pound or less.	Thinner than No. 10 and not thinner than No. 20 wire gauge, seven-tenths of 1 cent per pound; thinner than No. 20, but not thinner than No. 25 wire gauge, eight-tenths of 1 cent per pound; thinner than No. 25 wire gauge, 1.1 cents per pound; thinner than No. 32 wire gauge, 1.2 cents per pound.		5
Coated with tin or lead or a mixture of tin or lead with other metal, and commercially known as tin plate or taggers' tin.	1½ cents per pound.		5
Cold rolled.	In addition to rate on steel sheets two-tenths of 1 cent per pound.		5
Galvanized or coated with zinc or spelter or other metal.	do.		5
Pickled by acid or by any other material or process.	Pay duty on steel sheets and in addition two-tenths of 1 cent per pound.		5
Polished or planished.	2 cents per pound.		5
Smoothed only, not polished.	As sheets, common or black, and in addition two-tenths of 1 cent per pound.		5
Sugar:			
Testing above 75 degrees and not above 76.	0.985 cent per pound.	(a)	5
Testing above 76 degrees and not above 77.	1.020 cents per pound.	(a)	5
Testing above 77 degrees and not above 78.	1.055 cents per pound.	(a)	5
Testing above 78 degrees and not above 79.	1.090 cents per pound.	(a)	5
Testing above 79 degrees and not above 80.	1.125 cents per pound.	(a)	5
Testing above 80 degrees and not above 81.	1.160 cents per pound.	(a)	5
Testing above 81 degrees and not above 82.	1.195 cents per pound.	(a)	5
Testing above 82 degrees and not above 83.	1.230 cents per pound.	(a)	5
Testing above 83 degrees and not above 84.	1.265 cents per pound.	(a)	5
Testing above 84 degrees and not above 85.	1.300 cents per pound.	(a)	5
Testing above 85 degrees and not above 86.	1.335 cents per pound.	(a)	5
Testing above 86 degrees and not above 87.	1.370 cents per pound.	(a)	5
Testing above 87 degrees and not above 88.	1.405 cents per pound.	(a)	5
Testing above 88 degrees and not above 89.	1.440 cents per pound.	(a)	5
Testing above 89 degrees and not above 90.	1.475 cents per pound.	(a)	5
Testing above 90 degrees and not above 91.	1.510 cents per pound.	(a)	5
Testing above 91 degrees and not above 92.	1.545 cents per pound.	(a)	5
Testing above 92 degrees and not above 93.	1.580 cents per pound.	(a)	5

a Rule 26, 20 per cent less than third class.

TABLE 12.—Customs duties upon articles mentioned in testimony which take class rates, with the classification of such articles in less than carload and carload quantities under the official classification—Continued.

ARTICLES.	CUSTOMS DUTIES.	Classification.	
		L. C. L.	C. L.
Sugar—Continued.			
Testing above 93 degrees and not above 94.	1.615 cents per pound.....	(a)	5
Testing above 94 degrees and not above 95.	1.650 cents per pound.....	(a)	5
Testing above 95 degrees and not above 96.	1.685 cents per pound.....	(a)	5
Testing above 96 degrees and not above 97.	1.720 cents per pound.....	(a)	5
Testing above 97 degrees and not above 98.	1.755 cents per pound.....	(a)	5
Testing above 98 degrees and not above 99.	1.790 cents per pound.....	(a)	5
Testing above 99 degrees.....	1.825 cents per pound.....	(a)	5
Testing above No. 16 Dutch standard in color.	1.95 cents per pound.....	(a)	5
Grape or glucose.....	1½ cents per pound.....		5
Maple, in packages.....	4 cents per pound.....	3	4
Refined.....	1.95 cents per pound.....	(a)	5
Tallow, vegetable.....	Three-fourths of a cent per pound.	(a)	5
Sugar, not above No. 16 Dutch standard in color, tank bottoms, syrups of cane juice, melassa, concentrated melada, concrete and concentrated molasses, tested by the polariscope not above 75°.	0.950 cent per pound.....	(a)	5

(a) Rule 36, 20 per cent less than third class.

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ADVANCES IN FREIGHT RATES.

Power of Interstate Commerce Commission in relation to, see INTERSTATE COMMERCE COMMISSION.

1. Transportation by rail is a quasi-public service, not to be sold to the highest bidder, and the charges therefor are not controlled by the law of supply and demand. Freight rates do not in fact rise and fall with changes in prices of market commodities, though they are often affected by commercial conditions; and when reductions have been made on account of commercial depressions, it is difficult to see why corresponding advances may not properly be made with the return of business prosperity. *In the Matter of Proposed Advances in Freight Rates*, 382.

2. An increase which results solely from the withdrawal of a lower export rate, or from the maintenance of a published tariff, cannot ordinarily be condemned as unlawful. While railroads have suffered severely in the past, and should be allowed to recuperate while prosperity continues, it does not follow necessarily that they are entitled to advance former rates which were not reduced on account of financial depressions. *Id.*

3. Where a general investigation of proposed advances in freight charges was in a manner *ex parte*, although the respondent carriers were fully heard through their traffic representatives, and in some instances through their attorneys, and facts not brought out in the inquiry, with further discussion of the subject, might lead to a different conclusion, no order was made; but it was determined that, unless the rates be readjusted in accordance with the views expressed by the Commission, proceedings would be begun against the several lines, which would put directly in issue the rates involved. *Id.*

4. The legality of the recent advance to 20 cents of the tariff rates on grain and grain products from Chicago to New York, which have not exceeded 17½ cents during the last four years, except for a brief period, while the actual rates have been materially and sometimes greatly below

that figure, depends upon two considerations: First, whether the increased rate is reasonable, having reference to the cost and value of the service, and as compared with rates on other commodities; and, second, whether it is reasonable in the absolute, regarded as essentially a tax upon the people who ultimately pay the transportation charge. *Id.*

5. It is not shown that the rate of 17½ cents on grain and grain products from Chicago to New York is unremunerative or disproportionate as compared with other rates; and whether tested by the cost of movement, by what the carriers have voluntarily accepted in the past, or by comparison with rates on somewhat similar kinds of traffic, it is not shown to be unprofitable or unreasonably low. It is 10 to 40 per cent higher than the rates actually received in recent years, and nothing appears from the financial condition of the carriers to justify a greater advance. *Id.*

6. The advance in the rate on packing-house products, which was made by withdrawing a lower export rate is not properly an advance. *Id.*

7. The advances in rate on dressed meats ought not to be condemned, under the peculiar circumstances surrounding that traffic. *Id.*

8. The advances in the domestic rates on grain and grain products from 17½ to 20 cents per 100 pounds from Chicago is not justified. *Id.*

9. As rates on iron articles were formerly reduced on account of commercial conditions, the advances in those rates may have been proper owing to subsequent changes in such conditions. *Id.*

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Extension of time to comply with certain provisions of the Safety Appliance Act. *Re Applications of Certain Railroad Companies for an Extension of Time, etc.* 522.

Carriers are left by law to procure equipment for their business by lease or otherwise. They are not prohibited from leasing cars belonging to a shipper, nor are they compelled to contract in this respect with all shippers because they do with one. *Consolidated Forwarding Co. v. Southern P. Co.* 182.

CARS.

1. A carrier, by distributing cars for movement of traffic in such manner as to discriminate against one who desired to ship from Hartland, Clarksfield, and Brighton, Ohio, non-competitive stations, in favor of shippers at Norwalk, Ohio, and other competitive stations, was guilty of unlawful discrimination against such shipper, his traffic, and such non-competitive stations in favor of the competitive cities, shippers therefrom, and traffic there originating, and damages to the extent of \$100 were awarded against him. *Hawkins v. Wheeling & Lake Erie R. Co.* 212.

2. The defendant unlawfully discriminated against complainant and his locality, in delaying the furnishing of cars at Collins, O., ordered by him during the months of January and February, 1901, and cars ordered by him at Kipton, O., in August and September, until the following December and January, while cars ordered by other shippers at Norwalk were provided with comparative promptness. Complainant was awarded damages in the amount of \$200. *Hawkins v. Lake Shore & Michigan S. R. Co.* 207.

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Rates on. *Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co.* 558.

COAL FACINGS OR GROUND ANTHRACITE COAL.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 680, 681.

COCOA.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

COFFEE ROASTED.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

COMPETITION. See also WATER COMPETITION.

Neither the absence nor the presence of competition by carriers alone, nor the extent of their operations measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all. *Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co.* 160.

CONTRACTS.

A contract made by a carrier to transport machinery at a lower rate than that fixed by the legally fixed tariff is not binding upon the company, and its violation furnishes no grounds for redress under the Act to Regulate Commerce. *Red Cloud Mining Co. v. Southern P. Co.* 216.

COPPER.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

COPPER, SULPHATE OF.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

CORDIALS.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

CORN.

Rates on. *Mobile & O. R. Co., Re Rates and Practices of*, 375.
National Hay Asso. v. Lake Shore & Michigan S. R. Co. 264.

COTTON PIECE GOODS.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

CROCKERY.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 684, 686, 688.

DENIMS.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 686.

DISCRIMINATION.

Between places. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co. 318.

Hawkins v. Lake Shore & Michigan S. R. Co. 207.

Johnson v. Chicago, St. P. M. & O. R. Co. 221.

Wilmington Tariff Asso. of North Carolina v. Cincinnati, P. & Va. R. Co. 118.

Hawkins v. Wheeling & Lake Erie R. Co. 212.

Mayor and Council of Tifton, Ga. v. Louisville & N. R. Co. 160.

Holdskom v. Michigan Central R. Co. 42.

Hilton Lumber Co. v. Wilmington & Weldon R. Co. 17.

Kindel v. Atchison, T. & S. F. R. Co. 606.

Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co. 250.

Wichita v. Atchison, T. & S. F. R. Co. 507, 534, 558.

Wichita v. Chicago, R. I. & P. R. Co. 569.

Ulric & Williams v. Lake Shore & M. S. R. Co. 495.

S. Marten v. Louisville & N. R. Co. 581.

Against shippers. *Hawkins v. Lake Shore & M. S. R. Co.* 207.

Hawkins v. Wheeling & Lake Erie R. Co. 212.

National Hay Asso. v. Lake Shore & M. S. R. Co. 264.

1. No unjust discrimination against complainant shippers in favor of other shippers is shown by evidence that, during the anthracite coal strike, defendant railroad companies gave a preference to bituminous coal, and also to live stock and perishable freights, which caused delay in the transportation of complainant's hay, where only two cars "slipped through" to destination, after the receipt and before the delivery of complainant's car, showing that the embargo was practically maintained and enforced. *S. S. Daish & Sons v. Cleveland, A. & C. R. Co.* 513.

2. Where the goods are loaded at one time and place with but a single bill of lading, and the shipment is by one consignor to one consignee, and by the terms of sale become the property of the consignee upon delivery to the carrier, the latter has no right to inquire whether the consignee obtained his title from one or several owners, and if it accords the carload rate in case the consignor is the owner, failure on its part to extend the same privilege when the consignee is the owner violates sections 1, 2, and 3 of the Act to Regulate Commerce. *Buckeye Buggy Co. v. Cleveland, C. C. & St. L. R. Co.* 620.

Against commodities. *National Hay Asso. v. Lake Shore & M. S. R. Co.* 264.

Against consumers. *National Hay Asso. v. Lake Shore & M. S. R. Co.* 264.

Against dealers. *National Hay Asso. v. Lake Shore & M. S. R. Co.* 264.

Against producers. *National Hay Asso. v. Lake Shore & M. S. R. Co.* 264.

Against particular traffic. *Hawkins v. Wheeling & Lake Erie R. Co.* 212.

Against passengers. *MacLoon v. Boston & M. R. Co.* 642.

Behrend v. Washington S. R. Co. 637.

Between import and domestic traffic. *Report of Interstate Commerce Commission to Senate of the United States.* 650.

DISMISSAL.

1. No order was deemed necessary, and none was made, where the defendants had removed the cause of complaint, by establishing rates on sugar from Sugar City and Rocky Ford, Colorado, to Wichita and Hutchinson, Kansas, no higher than those in effect from same points to Kansas City, Mo. *Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co.* 507.

2. A complaint alleging unjust discrimination against complainant shippers was dismissed, where no unjust discrimination was shown. *S. S. Daish & Sons v. Cleveland, A. & C. R. Co.* 513.

WITHOUT PREJUDICE.

3. Complainant's claim for reparation having been settled by defendants, the case was, in view of the limited testimony presented by the consideration, dismissed without prejudice. *Sayles v. N. Y., N. H. & H. R. Co.* 492.

4. Where, under a complaint alleging that higher rates were enforced from northern and eastern markets to Dallas and Fort Worth than those in effect over lines through those Texas cities to Galveston and Houston, violating section 4 of the statute, the case was tried upon an erroneous theory that market and railroad competition could not work dissimilarity in the circumstances and conditions, within the meaning of the statute; and the testimony, which bore solely upon complainant's contention that the statute forbids higher rates on any and all freights for the shorter distance to Dallas or Fort Worth than for the longer distance to Galveston or Houston, was not sufficient to enable the Commission to reach a determination. The complaint was dismissed, but with leave to complainants to challenge the existing differences in rates as to particular articles, or any class of freights, by supplemental complaint, or any other new proceeding. *Dallas Freight Bureau v. Austin & N. W. R. Co.* 68.

DOG COLLARS.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 330.

DOOR POSTS.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 330.

DRESSED MEAT.

Rates on. *In the Matter of Proposed Advances in Freight Rates*, 392.

DRUGS.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

DRY GOODS.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

DUCK, COTTON, UNBLEACHED.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

EMBARGO.

No unjust discrimination against complainant shippers in favor of other shippers is shown by evidence that, during the anthracite coal strike, defendant railroad companies gave a preference to bituminous coal, and also

to live stock and perishable freights, which caused delay in the transportation of complainant's hay, where only two cars "slipped through" to destination, after the receipt and before the delivery of complainant's car, showing that the embargo was practically maintained and enforced. *S. S. Daish & Sons v. Cleveland, A. & C. R. Co.* 513.

EVIDENCE.

1. The evidence submitted is not sufficient to constitute the basis of a decision requiring defendant carriers to modify their long-standing system of rate-making, on the ground that the rates from New York, Chicago, St. Louis, and other eastern points to Phoenix, Ariz., are unjust and unreasonable in themselves, and relatively as compared with rates on like traffic between eastern points and Los Angeles. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

2. The presumption as to reasonableness of rates long kept in effect by carriers as a voluntary act on their part does not attach in a case where such rates have been established by carriers in compliance with the decision and order of the Commission. *Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co.* 440.

3. Where the chief question involved is the justice of the change in the classification of the commodities shipped by complainant, and the decision will affect all shippers of the same commodity in the classification territory, the profits secured by complainant from the operation of the railway connected with the defendant's line are not material, and the case must be decided in accordance with the principle which properly governs the classification of freight articles. *Id.*

4. The fact that a substantial dissimilarity of circumstances and conditions between the longer and the shorter distance points has been shown, which justifies a lower rate to the longer distance point, does not prevent the longer distance rate from being considered by way of comparison in determining whether or not the shorter distance rate is unreasonable or unduly prejudicial, where the competition and other compulsory conditions are found not to justify the whole disparity between the shorter and the longer distance rate. *S. Marten v. Louisville & Nashville R. Co.* 581.

Of prior rates, raising presumption against carrier as to their reasonableness. *National Hay Assn v. Lake Shore & Michigan S. R. Co.* 264.

EXTRACTS.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

FEED.

Rates on. *National Hay Assn. v. Lake Shore & Michigan S. R. Co.* 264.

FERRO-MANGANESE.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 672-679, 688.

FERRO-SILICON.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 672, 673.

FIREPROOFING—BUILDING TILE.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 680, 681.

FLOUR.

Rates on. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

FULLER'S EARTH.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 684, 686, 688.

FUR SCRAPS AND HATTERS' FURS.

Rates on; proper classification. *Myer v. Cleveland, Cincinnati & St. L. R. Co.* 78.

GALVANIZED IRON.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 330.

GLASS.

Table showing difference between import and domestic rates on shipment from various ports of entry, to various places. 684, 686, 688.

GLUE.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

GOATSKINS.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

GRAIN.

Rates on. *Diamond Mills v. Boston & Maine R. Co.* 311.

In the Matter of Proposed Advances in Freight Rates, 382.

Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co. 534.

GRASS HOOKS.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 330.

GRIND STONES.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 318.

GROCERIES.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684.

to live stock and perishable freights, which caused delay in the transportation of complainant's hay, where only two cars "slipped through" to destination, after the receipt and before the delivery of complainant's car, showing that the embargo was practically maintained and enforced. *S. S. Daish & Sons v. Cleveland, A. & C. R. Co.* 513.

EVIDENCE.

1. The evidence submitted is not sufficient to constitute the basis of a decision requiring defendant carriers to modify their long-standing system of rate-making, on the ground that the rates from New York, Chicago, St. Louis, and other eastern points to Phoenix, Ariz., are unjust and unreasonable in themselves, and relatively as compared with rates on like traffic between eastern points and Los Angeles. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

2. The presumption as to reasonableness of rates long kept in effect by carriers as a voluntary act on their part does not attach in a case where such rates have been established by carriers in compliance with the decision and order of the Commission. *Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co.* 440.

3. Where the chief question involved is the justice of the change in the classification of the commodities shipped by complainant, and the decision will affect all shippers of the same commodity in the classification territory, the profits secured by complainant from the operation of the railway connected with the defendant's line are not material, and the case must be decided in accordance with the principle which properly governs the classification of freight articles. *Id.*

4. The fact that a substantial dissimilarity of circumstances and conditions between the longer and the shorter distance points has been shown, which justifies a lower rate to the longer distance point, does not prevent the longer distance rate from being considered by way of comparison in determining whether or not the shorter distance rate is unreasonable or unduly prejudicial, where the competition and other compulsory conditions are found not to justify the whole disparity between the shorter and the longer distance rate. *S. Marten v. Louisville & Nashville R. Co.* 581.

Of prior rates, raising presumption against carrier as to their reasonableness. *National Hay. Asso. v. Lake Shore & Michigan S. R. Co.* 264.

EXTRACTS.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

FEED.

Rates on. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

FERRO-MANGANESE.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 672-679, 688.

through their traffic representatives, and in some instances through their attorneys, and facts not brought out in the inquiry, with further discussion of the subject, might lead to a different conclusion, no order was made; but it was determined that, unless the rates be readjusted in accordance with the views expressed by the Commission, proceedings would be begun against the several lines, which would put directly in issue the rates involved. *Id.*

3. No order was deemed necessary, and none was made, where the defendants had removed the cause of complaint, by establishing rates on sugar from Sugar City and Rocky Ford, Colorado, to Wichita and Hutchinson, Kansas, no higher than those in effect from the same points to Kansas City, Mo. *Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co.* 507.

4. While a complete system of interstate railway regulations would probably give the regulating body authority to determine when the privilege of milling in transit, and privileges of that nature, should be accorded, and upon what terms, no such authority is conferred upon the Commission by the present Act. *Diamond Mills v. Boston & Maine R. Co.* 311.

Report to the Senate of the United States in the matter of Rates on Import and Domestic Traffic. 650.

5. An order of the Commission requiring a carrier to desist from enforcing a classification of specified articles higher than the classification, which upon the facts is found to be lawful, is not prescribing a rate for the future. Classification determines the relation of rates as between commodities, not the rate itself, and when a commodity is transferred from a higher to a lower class, the revenues of the carrier are not necessarily diminished, since it may advance the rates applicable to those classes. *Myer v. Cleveland, Cincinnati & St. L. R. Co.* 78.

6. The discretionary power lodged with the Commission to extend the period of time within which carriers are required to comply with the safety appliance act, was designed to prevent special hardship upon the public and the carriers, and should only be exercised under such circumstances and for such length of time as was contemplated by the framers of the statutes, and are plainly inferable from its terms. *In Re Applications of Certain Railroad Companies for an Extension of Time, etc.* 522.

7. A submission by a railway company of a shipper's claim for carload rating on a mixed carload of lemons and pineapples should be treated as a case upon complaint and answer. *Roth v. Texas & P. R. Co.* 602.

8. While it was shown that many differentials in the rates named for carloads and less than carloads on traffic from the Middle West to the Pacific Coast were too great, and the varied commodity rates in the hardware schedule should be readjusted, and in some instances greater latitude should be given in the shipment practically of the same articles in mixed carloads, the Commission ordered a further hearing, where the record furnished no facts from which it could be intelligently determined what ought to be done in specific instances. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 318.

9. While the Commission will not, of its own motion, proceed in a branch of the case not litigated at the hearing, it will grant leave to the parties to do so if they desire. *Id.*

IRON.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 318, 327.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

IRON PYRITES.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 669, 672-681, 688.

JOINT TARIFF.

Right of party to joint tariff to refuse to shipper milling in transit privileges under joint through rates. *Diamond Mills v. Boston & Maine R. Co.* 311.

JUTE YARN.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

KAINIT.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 669, 672-681, 688.

KAOLIN.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 688.

LEASING CARS. See CARRIERS.

LEMONS.

Rates on. *Roth v. Texas & P. R. Co.* 602.

LIQUORS.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

LIVE STOCK.

Rates on. *Sayles v. N. Y., N. H. & H. R. Co.* 492.

LOCALITIES.

Discrimination between, see heading, *Discrimination between Places*, under TITLE RATES.

LONG AND SHORT HAUL PROVISION.

See heading *Long and Short Haul*, under title RATES.

LUMBER.

Rates on. *National Wholesale Lumber Dealers' Asso. v. Norfolk & Western R. Co.* 98.

Mayor and City Council of Wichita, Kansas v. Chicago, Rock Island & Pacific R. Co. 569.

Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co. 318.

S. Marten v. Louisville & Nashville R. Co. 581.

Rates on; through rate greater than local combined rates. *Hilton Lumber Co. v. Wilmington & Weldon R. Co.* 17.

MAGNESITE, GRECIAN, IN BAGS OR IN BULK.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-673, 675-681, 688.

MANGANESE.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 688.

MILLING IN TRANSIT.

Right of shipper to mill in transit, and forward milled product under through rate. *Diamond Mills v. Boston & Maine R. Co.* 311.

MINERAL WATER.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

MOHAIR.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

NOTICE. See SCHEDULES OR TARIFFS.**OATS.**

Rates on. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

ORANGES.

Rates on. *Consolidated Forwarding Co. v. Southern P. Co.* 182.

ORE (IRON, CHROME, OR MANGANESE) PER TON.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 669, 672-679, 688.

PACKING-HOUSE PRODUCTS.

Rates on. *In the Matter of Proposed Advances in Freight Rates*, 382.

PAINT, EARTH.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 680, 681.

PAPER.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 680, 681.

PAPER STOCK.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

PAPER WRAPPING.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. & R. Co.* 250.

PARTIES.

The St. Louis, Iron Mountain, and Southern Railway Company, although a proper, is not a necessary, party to proceedings against the Missouri Pacific Railway Company, the controlling company, to redress grievances in the matter of freight rates. *Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co.* 558.

PASSENGERS.

Unjust discrimination. *Behrend v. Washington S. R. Co.* 637.

MacLoon v. Boston & M. R. Co. 642.

PHOSPHATE, CONCENTRATED.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 680, 681.

PICKLES.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 686.

PIG IRON.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 669, 672-679, 688.

PINEAPPLES.

Rates on. *Roth v. Texas & P. R. Co.* 602.

PLACES.

Discrimination between, see heading, *Discrimination between Places*, under TITLE RATES.

PORCELAIN WARE.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 687.

PORTER.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 685.

POSTING. See SCHEDULES OR TARIFFS.

POTASH, CARBONATE OF.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 669, 672-679, 689.

POTASH, MURIATE OF.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 689.

POTASH, SULPHATE OF.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 669, 672-681, 689.

POTASSIUM, CYANIDE OF.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

POTATOES.

Rates on. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.
Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co. 250.

PRACTICE.

While the service of a complaint upon a controlling company may not be legal service upon a subsidiary company, it does in fact, for all practical purposes, inform the other company of the proceedings. *Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co.* 534.

PRESERVES.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

PRIOR RATES.

As raising presumption against carrier of their reasonableness. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

PROPOSED ADVANCES IN FREIGHT RATES. See ADVANCES IN FREIGHT RATES.

RADIATORS.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 318.

RATES.

Power of Commission to correct unwarranted general advances in freight rates, see INTERSTATE COMMERCE COMMISSION.

Posting notices as to, see SCHEDULES OR TARIFFS.

1. A contract made by a carrier to transport machinery at a lower rate

than that fixed by the legally fixed tariff is not binding upon the company; and its violation furnishes no grounds for redress under the Act to Regulate Commerce. *Red Cloud Mining Co. v. Southern P. Co.* 216.

2. While carriers are entitled to determine for themselves what are proper rates in the first instance, they cannot justify the making of rate advances by concerted action, under circumstances not showing justification for increased revenue, by the plea of financial necessity; the controlling question must be as to reasonableness and justification of the advance in classification and rates, on facts shown in each case. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

DIFFERENCES IN RATE ON IMPORT AND DOMESTIC TRAFFIC.

Report of Interstate Commerce Commission to Senate of the United States. 650.

3. Transportation by rail is a quasi-public service, not to be sold to the highest bidder, and the charges therefor are not controlled by the law of supply and demand. Freight rates do not in fact rise and fall with changes in prices of market commodities, though they are often affected by commercial conditions; and when reductions have been made on account of commercial depressions, it is difficult to see why corresponding advances may not properly be made with the return of business prosperity. *In the Matter of Proposed Advances in Freight Rates*, 382.

4. An increase which results solely from the withdrawal of a lower export rate, or from the maintenance of a published tariff, cannot ordinarily be deemed as unlawful. While railroads have suffered severely in the past, and should be allowed to recuperate while prosperity continues, it does not follow necessarily that they are entitled to advance former rates which were not reduced on account of financial depressions. *Id.*

5. The legality of the recent advance to 20 cents of the tariff rates on grain and grain products from Chicago to New York, which have not exceeded 17½ cents during the last four years, except for a brief period, while the actual rates have been materially, and sometimes greatly, below that figure, depends upon two considerations: First, whether the increased rate is reasonable, having reference to the cost and value of the service, and as compared with rates on other commodities; and, second, whether it is reasonable in the absolute, regarded as essentially a tax upon the people who ultimately pay the transportation charge. *Id.*

6. It is not shown that the rate of 17½ cents on grain and grain products from Chicago to New York is unremunerative or disproportionate as compared with other rates; and whether tested by the cost of movement, by what the carriers have voluntarily accepted in the past, or by comparison with rates on somewhat similar kinds of traffic, it is not shown to be unprofitable or unreasonably low. It is 10 to 40 per cent higher than the rates actually received in recent years, and nothing appears from the financial conditions of the carriers to justify a greater advance. *Id.*

7. The advance in the rate on packing-house products which was made by withdrawing a lower export rate is not properly an advance. *Id.*

8. The advances in rate on dressed meats ought not to be condemned, under the peculiar circumstances surrounding that traffic. *Id.*

The advances in the domestic rates on grain and grain products from 17½ to 20 cents per 100 pounds from Chicago is not justified. *Id.*

10. As rates on iron articles were formerly reduced on account of commercial conditions, the advances in those rates may have been proper, owing to subsequent changes in such conditions. *Id.*

CARLOAD RATES.

11. In fixing carload rates, the same rating should be given to consignor and consignee when the condition of ownership after the property is delivered to the carrier is the same; though no opinion is expressed as to whether a carrier may distinguish between a forwarding agent and the actual owner of the goods. *Buckeye Buggy Co. v. Cleveland, C. C. & St. L. R. Co.* 620; *C. S. Bell Co. v. Baltimore & O. R. R. Co.* 632.

12. Before allowing a carload rating for a carload shipment, a carrier is allowed to require that goods shall be loaded at one time and place, that but a single bill of lading shall be allowed, and that the shipment shall be by one consignor to one consignee. *Id.*

13. The commodity tariff applying on traffic from the Middle West to the Pacific Coast territory is, to some extent, unlawful, in that it specifies a number of varied commodity rates,—especially for the hardware schedule, and unduly prevents, in some instances, the shipment of articles of the same class in mixed carloads at carload rates. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 318.

DIFFERENTIALS BETWEEN CARLOADS AND LESS THAN CARLOADS.

14. A differential as between carloads and less than carloads, on the traffic from the Middle West to Pacific Coast territory, which is at once more than 50 cents per 100 pounds, and more than 50 per cent of the carload rate, is prima facie excessive; and while it does not follow that every differential may equal this, or that every one which exceeds this is unlawful, any differential in excess of this requires special justification. *Id.*

15. In the adjustment of carload and less than carload rates, circumstances often render the application of a greater differential more proper in one case than in another. *Id.*

16. In determining the propriety of a differential between carloads and less than carloads, not only the difference of the expense of handling traffic at terminals should be considered, but also the increased cost of hauling less than carload traffic; and therefore the differentials need not be approximately a fixed quantity, but may increase with the distance, and justify a difference in rates between carloads and less than carloads in shipments. *Id.*

17. Where but a small amount of less than carload traffic moves by

water, the water competition applies only to carload traffic, and while reducing the rate on carload business, need not necessarily affect the rate on less than carload traffic. *Id.*

18. The differences between carload and less than carload rates from St. Louis, Chicago, and other points in the Middle West to the Pacific Coast territory, and which average about 50 cents per 100 pounds, are not unjust taking the rate adjustment as a whole, and giving due consideration to the controlling force of water competition between the eastern seaboard and the Pacific Coast, the difference in the cost of service by rail, the interests of the parties, and the preservation of reasonable competition between the Middle West and the Pacific Coast jobbers. *Id.*

19. The legal duty of common carriers to classify traffic, and fix charges thereon in such a manner that the burden of transportation will be reasonably and justly distributed among articles they carry, arises under the obligation imposed upon them to charge reasonable and just rates, and to refrain from discrimination; and hence, where the need of additional revenue is apparent, the carrier cannot arbitrarily apply higher rates to certain articles, regardless of the relation which they bear to other commodities commonly offered for transportation. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

20. In freight classification like the Official, which contains but six general classes, it is manifestly impossible to limit each class to such articles as resemble each other in character, use, value, volume, bulk, weight, risk, expense of handling, and competition. The best that can be done is to place two or more articles possessing general similarity in the same class, and where an article is not analogous to any other, to put it in the class containing commodities most nearly related to it in general and other essential respects. *Id.*

21. The advancement of hay and straw by several carriers, from sixth to fifth class, and thereafter charging fifth class rates for transportation, is unreasonable and unjust, and resulted in unlawful discrimination and prejudice against hay and straw localities in Official Classification Territory wherein those commodities are produced, and against producers, shippers, dealers, and consumers of such articles in that section of the country. *Id.*

22. The act of carriers in keeping hay and straw in the sixth class, and charging sixth class rates thereon for thirteen years, with the exception of a short period, is evidence that such classification and rates are reasonably high; and while not conclusive, it is in the nature of an admission which tends to show the unreasonableness of the subsequent advance of such commodities to the fifth class, the force of which becomes great, in view of the carriers' largely increased business and profits. *Id.*

23. The legal duty of common carriers to classify traffic, and fix charges thereon in such a manner that the burden of transportation will be reasonably and justly distributed among articles they carry, arises under the obligation imposed upon them to charge reasonable and just rates, and to

refrain from discrimination; and hence, where the need of additional revenue is apparent, the carrier cannot arbitrarily apply higher rates to certain articles, regardless of the relation which they bear to other commodities commonly offered for transportation. *Id.*

24. Where the chief question involved is the justice of the change in the classification of the commodities shipped by complainant, and the decision will affect all shippers of the same commodity in the classification territory, the profits secured by complainant from the operation of the railway connected with the defendant's line are not material, and the case must be decided in accordance with the principle which properly governs the classification of freight articles. *Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co.* 440.

25. The privilege of shipping small quantities of articles in the same class as a mixed carload is valuable to a great many shippers, and is not to be condemned because it may result in some degree to the advantage of particular manufacturers or to jobbers. *Id.*

26. The act of defendants in increasing the classification of soap in less than carloads from fourth to third class was unreasonable and unjust, and under the Act to Regulate Commerce their subsequent practice of applying 20 per cent less than third class rates on such traffic is also unlawful. *Id.*

27. The action of defendant in placing soap in carloads with common grades of groceries and other general merchandise in the fifth class of their freight classification, and refusing to reduce soap in carloads to the sixth class, which includes only low grade freights, where other articles to which carload soap properly compares are retained in the fifth class, is unlawful. *Id.*

28. To require a separation and grading into different classes with varying rates different grades of the same articles of freight would greatly complicate the work, and go far to defeat the very purpose of classification, and even then it would be impracticable to apportion with mathematical exactness the burdens of transportation; the best result obtainable in this direction is reasonable and substantial approximation. *Derr Mfg. Co. v. Pennsylvania R. Co.* 646.

29. A cheap grade of brush, manufactured and sold as a blacking dauber, is not entitled to be classified lower than the class to which bristle brushes in general are assigned. *Id.*

30. Hatters' furs and fur scraps and cuttings are unlawfully made double first class as compared with articles taking first class rates in defendant's classification, including hats, the finished product for which these commodities constitute raw material; and they cannot lawfully be classed higher than first class, where they are offered for transportation in packages in bulk, but of convenient size, and their value is not great, and they are not liable to be lost by damage in transit, and are more desirable for traffic than other commodities in the defendant's first class, and the difference in freight rates operate to damage complainant, who is a western manufacturer of hats, in his competition with eastern manufacturers. *Myer v. Cleveland, Cincinnati & St. L. R. Co.* 78.

31. A classification is unjust and unreasonable where it fails to maintain a fair relation between the various commodities. *Id.*

32. An order of the Commission requiring a carrier to reclassify specified articles does not prescribe a rate for the future, as the classification merely determines the relation between commodities, not the rate itself; and when a commodity is transferred from a higher to a lower class the revenues of the carrier are not necessarily diminished, since it may advance the rates applicable to those classes. *Id.*

COMPETITION.

33. Where but a small amount of less than carload traffic moves by water, the water competition applies only to carload traffic, and while reducing the rate on carload business need not necessarily affect the rate on less than carload traffic. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 318.

34. With water competition compelling low all-rail freight rates from New York to San Francisco and other Pacific Coast terminals, a showing that the distance is less, and that graded rates were formerly in force, is not sufficient to warrant an order requiring lower rates from Chicago and other interior points than from New York, on traffic carried by rail to Pacific Coast destinations. *Id.*

35. The localities in Official Classification Territory wherein hay and straw are produced were discriminated against by the act of several carriers in advancing those commodities from the sixth to the fifth class, and thereafter charging fifth class rates for transportation. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

36. Preference existing under relative rates to competing localities must be shown to result from wrongful action of the carrier, before it can be required to readjust the rates. *Wilmington Tariff Asso. of North Carolina v. Cincinnati, Portsmouth & Va. R. Co.* 118.

37. An adjustment of freight rates from Chicago, St. Louis, and other related points, on shipments to Wilmington, N. C., is unreasonable, and subjects the latter city to undue disadvantages, where it operates largely to deprive Wilmington, in its competition for trade in common territory with Norfolk and Richmond and other Virginia cities, of the benefits of those primary markets, and limits Wilmington to such intermediate points of supply as Cincinnati and Louisville, from which points the rate relations appear to be fair and reasonable. *Id.*

38. Where rates from Cincinnati and Louisville to Norfolk are much lower than those from St. Louis and Chicago to Norfolk, and the competitive conditions governing rates from Cincinnati and Louisville appear to be of the same general character as those which apply from Chicago or St. Louis, and no substantial difference appears to exist in the real forceful conditions governing rates from these points of supply, except that of distance, which favors Cincinnati and St. Louis, just rate relations from Cincinnati and St. Louis to Norfolk and Wilmington are a fair basis for relative rates from St. Louis and Chicago. *Id.*

39. It is the duty of the Commission to consider all circumstances and conditions that reasonably apply to the situation, the legitimate interests of the carrying companies as well as those of traders and shippers, and the welfare of the communities at localities where the goods are delivered as well as that of communities in the places of shipment, and to give effect to this rule a much broader view must be taken than that of the competition of carriers alone. *Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co.* 100.

40. Rates on shipments which pass from New York and other eastern cities over water and rail lines to Tifton, Ga., and through Tifton to Albany, which are higher to Tifton than those to Albany, the longer distance point, violate the Act to Regulate Commerce. *Id.*

41. With water competition compelling low all-rail freight rates from New York to San Francisco and other Pacific Coast terminals, a showing that the distance is less, and that graded rates were formerly in force, is not sufficient to warrant an order requiring lower rates from Chicago and other interior points than from New York on traffic carried by rail to Pacific Coast destinations. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 318.

42. Freight rates on goods shipped from Cincinnati, Louisville, Evansville, and Nashville to Tifton, which are higher than rates on goods shipped to Valdosta, Ga., the longer distance point, via Tifton, violate the Act to Regulate Commerce. *Id.*

43. As a general rule, subject to certain exceptions, Denver must receive the same treatment that is accorded to cities of the Middle West and Missouri River territory in making trans-continental rates. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

44. Defendants are not justified in maintaining rates from the Pacific Coast which are lower to Missouri River points than to Denver, upon sea-shells, vanilla beans, whalebone, whale oil foots, hair, copper, cement, glue, honey, mohair, hides, wool, sealskins, goatskins, sheepskins, and skins of various fur-bearing animals. *Id.*

45. The defendants are justified in maintaining rates from the Pacific Coast which are lower to Missouri River points than to Denver upon rice, hemp, baking powder, blankets, books, boot and shoe heels, chocolate, cocoa, and extracts, as exceptions to the general rule that, in the making of trans-continental rates, Denver must receive the same treatment that is accorded to cities in the Middle West and Missouri River territory. *Id.*

46. In cases of preference between places, the question is not merely that some form of competition exists at the more favored point which is not found at the other, but rather do all the circumstances and conditions, giving due regard to the interests of all parties, excuse the preference. *Holdskom v. Michigan Central R. Co.* 42.

47. If Los Angeles has means at its command by which it may force a rate from the two railroad lines, or either of them which serve it and San Bernardino, which the latter place does not possess, that is an element

to be considered in determining the legality of a lower rate from the east to Los Angeles, the longer distance point; but the mere fact that it is a larger town with more business, and thereby creating a fiercer competition between the lines, does not justify the difference in charges. *Id.*

48. Conditions affecting traffic, including carriages and buggies, from eastern points, are rendered substantially different at Los Angeles than at San Bernardino, a shorter distance point on the same line, by the competition of carriers wholly by water from the Atlantic seaboard to Port Los Angeles, a point on the Pacific coast near Los Angeles and the effect of such competition by water direct to San Francisco is properly recognized at Los Angeles by giving that city all-rail rates from the east as low as those in effect to San Francisco. *Id.*

49. The Commission refused to hold that the charging of a higher rate for the transportation of goods from the east to San Bernardino than is enforced on similar traffic to Los Angeles, a more distant point, is justified by the fact that goods so transported can be brought from the east by several railroads to various northern Pacific seaports, and then carried from thence to Los Angeles without passing over the routes of the S. P. or S. F. Systems, but must pass over one of such routes to reach San Bernardino, as it is questionable whether traffic ought to be carried by such circuitous railroad and water routes as is necessary to reach Los Angeles. *Id.*

50. The lumber shippers of Wilmington are unjustly discriminated against by a through rate to Philadelphia, Jersey City, and Boston via Portsmouth and Pinners Point, which is greater than the aggregate local rates on lumber from Wilmington to Norfolk or Portsmouth, Va., added to the rates in force from the latter places to Philadelphia, Jersey City, and Boston, where the local rates from Norfolk or Portsmouth to the named northern points are made to meet water competition; and such competition also exists in traffic to Wilmington from northern seaports; and the circumstances and conditions applying to the transportation of lumber from Portsmouth, Norfolk, and vicinity to the northern points, on traffic originating there and at Wilmington, are substantially similar. *Hilton Lumber Co. v. Wilmington & Weldon R. Co.* 17.

51. Case held for further investigation in regard to certain apparent discriminations resulting from a lower proportion or arbitrary charged by carriers south of Norfolk, on lumber from Wilmington to New York City—than on lumber from the same place to Jersey City, located on the Hudson River opposite New York, and from lower rates charged from interior points near Wilmington to Portsmouth or Pinners Point on shipments to northern seaports, than the proportion or arbitrary charged on through business from Wilmington to the same destinations. *Id.*

52. The rates from Chicago to Norfolk, Neb., are unjust and unreasonable, and should not exceed those in force from Chicago to Columbus, Neb., and the rates from Duluth to Norfolk should not exceed the rates in force from Duluth to Emerson, Neb., added to the present local rate in effect from Emerson to Norfolk. *Johnson v. Chicago, St. Paul, Minneapolis & Omaha R. Co.* 221.

53. When water competition permits the establishment of classifications and rates below the rates to non-competitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter distance points not affected by such competition. *Shippers' Union of Phoenix v. Atchison, Topeka & S. F. R. Co.* 250.

54. Freight rates on sugar from New Orleans to Tifton, Ga., are unjust and unduly prejudicial to Tifton, where they exceed the same rates on the same commodity from New Orleans to Valdosta, Ga., the longer distance point, via Tifton, where the circumstances and conditions at Tifton are substantially similar to those at Valdosta. *Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co.* 160.

55. The defendants having removed the cause of complaint by establishing rates on sugar from Sugar City and Rocky Ford, Colorado, to Wichita and Hutchinson, Kansas, no higher than those in effect from the same points to Kansas City, Missouri, no order was made in the proceeding. *Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co.* 507.

56. Where actual competition exists at the more distant point, which does not obtain at the nearer point, and which has actually produced a lower rate at the more distant point which the carrier cannot control and must meet to obtain a share of the business, the Act to Regulate Commerce does not prohibit the disparity in rates at the shorter and longer distance points, provided the longer distance competitive rate is remunerative, and the shorter distance rate reasonable. *Mayor and City of Wichita v. Atchison, T. & S. F. R. Co.* 534.

57. The defendant's rates on coal in carloads from Minden, Mo., McAlister, I. T., and Russellville, Ark., to Wichita do not unjustly discriminate in favor of Kansas City, by charging a lower rate to that city, where the rates to Kansas City are controlled and actually forced by competitive conditions governing the transportation of coal to that city, and are remunerative. *Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co.* 558.

58. A charge of a higher rate on lumber from western points to Wichita, Kansas, than for the longer distance through Wichita to Topeka, Kan., violates the Interstate Commerce Act, where the circumstances and conditions at Topeka do not differ from those at Wichita. *Mayor and City Council of Wichita, Kansas v. Chicago, Rock Island & Pacific R. Co.* 569.

59. Defendant's lumber rates to Wichita are not unreasonable and unjust as compared with those in effect to Kansas City, Omaha, and Lincoln, where competitive conditions exist at such places which produce low rates to those points from the lumber territory in question, and which competitive conditions do not exist at Wichita. *Id.*

60. There is no unjust discrimination in charging higher rates for the transportation of ice to and from points in Michigan to Springfield than for the longer distance to Columbus, where other and shorter delivering lines compete for traffic to Columbus, and the short line distance to Columbus is less than the short line distance to Springfield. *Ulric & Williams v. Lake Shore & Michigan S. R. Co.* 495.

61. Although the dissimilarity of circumstances and conditions justifies the defendant in charging a higher rate on lumber from Fountain Head, Gallatin, St. Blaise, and Pilot Knob to Louisville than for the longer distance over the same line from Nashville, a difference of 1 cent in the rates is sufficient to offset the difference in circumstances and conditions, and any greater difference in the rates renders the rate from the intermediate points relatively unreasonable. *S. Marten v. Louisville & Nashville R. Co.* 581.

DISCRIMINATION BETWEEN SHIPPERS.

62. Shippers of hay and straw were discriminated against by the act of several carriers in advancing those commodities from sixth to fifth class, and thereafter charging fifth class rates for transportation. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

DISCRIMINATION BETWEEN COMMODITIES.

63. Hay and straw were discriminated against by the act of several carriers in advancing those commodities from sixth to fifth class, and thereafter charging fifth class rates for transportation. *Id.*

DISCRIMINATION AGAINST PASSENGERS.

64. It is not an unjust discrimination to charge a passenger a fare from Boston, Mass., to Janesville, Wis., which is \$2.00 greater than the fare he paid from Janesville to Boston. *MacLoon v. Boston & M. R. Co.* 642.

65. A passenger is not unjustly discriminated against by a railroad fare from Washington to Moseley passing through Richmond, although the fare is 50 cents in excess of the combined local fares, where the extra 50 cents covered a bus transfer charge. *Behrend v. Washington, S. R. Co.* 637.

LONG AND SHORT HAUL.

66. As a general rule, subject to certain exceptions, Denver must receive the same treatment that is accorded to cities of the Middle West and Missouri River territory in making trans-continental rates. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

67. The defendants are justified in maintaining rates from the Pacific Coast which are lower to Missouri River points than to Denver upon rice, hemp, baking powder, blankets, books, boot and shoe heels, chocolate, cocoa, and extracts, as exceptions to the general rule that, in the making of trans-continental rates, Denver must receive the same treatment that is accorded to cities in the Middle West and Missouri River territory. *Id.*

68. There is no unjust discrimination in charging higher rates for the transportation of ice to and from points in Michigan to Springfield than for the longer distance to Columbus, where other and shorter delivering lines compete for traffic to Columbus, and the short line distance to Columbus is less than the short line distance to Springfield. *Ulric & Williams v. Lake Shore & Michigan S. R. Co.* 495.

69. Where actual competition exists at the more distant point, which does not obtain at the nearer point, and which has actually produced a lower rate at the more distant point which the carrier cannot control and must meet to obtain a share of the business, the Act to Regulate Commerce does not prohibit the disparity in rates at the shorter and longer distance points, provided the longer distance competitive rate is remunerative, and the shorter distance rate reasonable. *Mayor and City of Wichita v. Atchison, T. & S. F. R. Co.* 534.

70. A charge of a higher rate on lumber from western points to Wichita, Kansas, than for the longer distance through Wichita to Topeka, Kan., violates the Interstate Commerce Act, where the circumstances and conditions at Topeka do not differ from those at Wichita. *Mayor and City Council of Wichita, Kansas v. Chicago, Rock Island & Pacific R. Co.* 569.

71. The fact that lumber rates from western points to Wichita, Kansas, are higher than for the longer distance through Wichita to Kansas City, Omaha, and Lincoln, Neb., does not constitute a violation of the Interstate Commerce Act, where competitive conditions exist in Kansas City, Omaha, and Lincoln which do not exist at Wichita, and which produce low rates to those points from the lumber territory in question. *Id.*

72. Freight rates on goods shipped from Cincinnati, Louisville, Evansville, and Nashville to Tifton, which are higher than rates on goods shipped to Valdosta, Ga., the longer distance point, via Tifton, violate the Act to Regulate Commerce. *Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co.* 160.

73. Competition, whether it be water competition, railroad competition, or market competition, provided it produces a substantial effect upon traffic and rate-making, may create dissimilarity of circumstances and conditions; and such competition must be taken into consideration in cases arising under the fourth section. *Dallas Freight Bureau v. Austin & N. W. R. Co.* 68.

74. In cases involving lower charges for longer than for shorter distances over the same line in the same direction, the shorter being included within the longer distance, all forms of competition must be taken into account; but the mere fact of competition at the more distant point does not of necessity justify a lower longer distance charge. *Holdzkom v. Michigan Central R. Co.* 42.

75. If Los Angeles has means at its command by which it may force a rate from the two railroad lines, or either of them which serve it and San Bernardino, which the latter place does not possess, that is an element to be considered in determining the legality of a lower rate from the east to Los Angeles, the longer distance point; but the mere fact that it is a larger town, with more business, and thereby creating a fiercer competition between the lines, does not justify the difference in charges. *Id.*

76. Conditions affecting traffic, including carriages and buggies, from eastern points are rendered substantially different at Los Angeles than at San Bernardino, a shorter distance point on the same line, by the competi-

tion of carriers wholly by water from the Atlantic seaboard to Port Los Angeles, a point on the Pacific coast near Los Angeles; and the effect of such competition by water direct to San Francisco is properly recognized at Los Angeles by giving that city all-rail rates from the east as low as those in effect to San Francisco. *Id.*

77. The Commission refused to hold that the charging of a higher rate for the transportation of goods from the east to San Bernardino than is enforced on similar traffic to Los Angeles, a more distant point, is justified by the fact that goods so transported can be brought from the east by several railroads to various northern Pacific seaports, and then carried from thence to Los Angeles without passing over the routes of the S. P. or S. F. Systems, but must pass over one of such routes to reach San Bernardino, as it is questionable whether traffic ought to be carried by such circuitous railroad and water routes as is necessary to reach Los Angeles. *Id.*

78. The rule that while the aggregate rate should increase, the rate per ton per mile should decrease as distance increases, is not one required by the statute, and is subject to qualifications and exceptions. *Hilton Lumber Co. v. Wilmington & Weldon R. Co.* 17.

79. In a case involving shorter distance charges higher than those to or from longer distance points, the carrier cannot rightfully claim justification for greater dissimilarity in the rates than may be indicated by the ascertained dissimilarity in circumstances and conditions. *S. Marten v. Louisville & Nashville R. Co.* 581.

80. The defendant does not violate the 4th section of the Act to Regulate Commerce by charging a higher rate from Fountain Head, Gallatin, St. Blaise, and Pilot Knob to Louisville than from the longer distance over the same line from Nashville to Louisville, as there exists a substantial dissimilarity of circumstances and conditions as between Nashville and the intermediate points mentioned. *Id.*

81. Although the dissimilarity of circumstances and conditions justifies the defendant in charging a higher rate on lumber from Fountain Head, Gallatin, St. Blaise, and Pilot Knob to Louisville than for the longer distance over the same line from Nashville, a difference of 1 cent in the rates is sufficient to offset the difference in circumstances and conditions, and any greater difference in the rates renders the rate from the intermediate points relatively unreasonable. *Id.*

REASONABLENESS OF RATES.

Basis for determining. *In Re Proposed Advances in Freight Rates*, 382.

82. A passenger fare from Boston, Mass., to Janesville, Wis., is not rendered unreasonable by the fact that it is \$2.00 greater than the fare the passenger paid from Janesville to Boston. *MacLoon v. Boston & M. R. Co.* 642.

83. The through rate on lumber from Wilmington to Philadelphia, Jersey City, and Boston via Norfolk or Portsmouth is unreasonable, and violates §§ 3, 1, and 2 of the Act to Regulate Commerce, where it is greater than

the aggregate local rates on transportation of lumber under similar circumstances and conditions. *Hilton Lumber Co. v. Wilmington & Weldon R. Co.* 17.

84. The rates for the shipment of lumber in carloads from points in West Virginia and southwestern Virginia to New York city, over the N. & W. Railroad to Hagerstown and thence via the P. R. R. to destination, and over the N. & W. to Shenandoah Junction and thence via the B. & O. R. R., are unreasonable and unjust, where they are made up by adding to those of the N. & W. to Hagerstown and Shenandoah Junction a specific or arbitrary of 13 cents per 100 pounds charged by the Pennsylvania, and Baltimore & Ohio respectively, and the specific rate was advanced from 12 to 13 cents in 1893, and the N. & W. charges were generally increased in 1899 and 1900 about 1½ cents per 100 pounds, while much lower rates on competing lumber are maintained from neighboring points in the same shipping section to New York by the B. & O., and by the C. & O. Ry. connecting with the B. & O. at Staunton and the P. R. R. at Washington, and the present rates by the N. & W. yield higher rates per ton per mile than those of the C. & O. line. *National Wholesale Lumber Dealers' Asso. v. Norfolk & Western R. Co.* 87.

85. Neither the absence nor the presence of competition by carriers alone, nor the extent of their operations measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all. *Mayor and Council of Tipton, Ga. v. Louisville & Nashville R. Co.* 160.

86. The rates from Chicago to Norfolk, Neb., are unjust and unreasonable, and should not exceed those in force from Chicago to Columbus, Neb. And the rates from Duluth to Norfolk should not exceed the rates in force from Duluth to Emerson, Neb., added to the present local rate in effect from Emerson to Norfolk. *Johnson v. Chicago, St. Paul, Minneapolis & Omaha R. Co.* 221.

87. When water competition permits the establishment of classifications and rates below the rates to noncompetitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter distance points not affected by such competition. *Shippers' Union of Phoenix v. Atchison, Topeka & S. F. R. Co.* 250.

88. In the carriage of great staples, which supply enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carriers are both necessary and justifiable; and although the defendant carriers may be at some greater expense to handle and transport hay than some other articles in the same freight classification, the character, value, volume, and use of that commodity are such as to require relatively low charges for its carriage. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

89. The effect of a rule permitting the shipment of small quantities of articles in the same class as a mixed carload is properly to be considered in determining the reasonableness and justice of an increase of a long

standing less than carload rate, thereby subjecting the shipper of less than a carload to an additional disadvantage in conjunction with the mixed carload rule. *Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co.* 440.

90. The fact that most shippers of a given article in part of a described territory secured reduced rates by billing at net weight, while many other shippers in another portion of the territory billed their goods at full weight of the package and contents, is not ground for reducing the rate, where the carriers, on being asked to discontinue such unjust discrimination, applied their established charges on the basis of gross weights, unless such net-weight practice had been so prevalent throughout substantially the whole territory inspected, and either authorized by carriers generally or so well known from constant and general application as to receive implied sanction. *Id.*

91. The presumption as to reasonableness of rates long kept in effect by carriers as a voluntary act on their part does not attach in a case where such rates have been established by carriers in compliance with the decision and order of the Commission. *Id.*

92. The present wheat rate of 30½ cents from Wichita to Galveston is excessive to the extent of 2 cents per 100 pounds. *Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co.* 534.

93. The rate of 28½ cents per 100 pounds charged by the different lines running to Wichita for the transportation of lumber from Camden, Ark., and Trinity, Tex., to Wichita, is excessive. *Mayor and City Council of Wichita, Kansas v. Chicago, Rock Island & Pacific R. Co.* 569.

94. The fact that a substantial dissimilarity of circumstances and conditions between the longer and shorter distance points has been shown, which justifies a lower rate to the longer distance point, does not prevent the longer distance rate from being considered by way of comparison in determining whether or not the shorter distance rate is unreasonable or unduly prejudicial, where the competition and other compulsory conditions are found not to justify the whole disparity between the shorter and the longer distance rate. *S. Marten v. Louisville & Nashville R. Co.* 581.

95. The Act to Regulate Commerce assumes that persons, corporations, and localities are interested in the rates charged to others, as well as those charged to them, and while the Act does not require all rates to be proportional, it makes the element of proportion an important one; and it follows that no rates can be reasonable in and of themselves which are made regardless of proportion. *Id.*

96. Although the dissimilarity of circumstances and conditions justifies the defendant in charging a higher rate on lumber from Fountain Head, Gallatin, St. Blaise, and Pilot Knob to Louisville than for the longer distance over the same line from Nashville, a difference of 1 cent in the rates is sufficient to offset the difference in circumstances and conditions, and any greater difference in the rates renders the rate from the intermediate points relatively unreasonable. *Id.*

97. Where the goods are loaded at one time and place with but a single

bill of lading, and the shipment is by one consignor to one consignee, and by the terms of sale become the property of the consignee upon delivery to the carrier, the latter has no right to inquire whether the consignee obtained his title from one or several owners, and if it accords the car-load rate in case a consignor is the owner, failure on its part to extend the same privilege when the consignee is the owner violates §§ 1, 2, and 3 of the Act to Regulate Commerce. *Buckeye Buggy Co. v. Cleveland, C. C. & St. L. R. Co.* 620.

THROUGH RATES.

Stop-over privilege. *Mobile & O. R. Co., In Re Rates and Practices of*, 373.

98. At common law, and under the Act to Regulate Commerce as interpreted by the courts, joint through routes and through rates are matters of contract between the connecting carriers, and the defendant, as party to a joint tariff which does not give shippers the privilege of milling in transit, acted within its legal right in notifying its immediate connections and the complainant that it would not permit that practice. *Diamond Mills v. Boston & Maine R. Co.* 311.

99. Shippers are not entitled as matter of right to mill grain in transit and forward the milled product under the through rate in force from the point of origin to the place of destination; on the contrary, milling in transit is a special privilege for which extra compensation is usually exacted by carriers, and which is only permitted by them under prescribed terms of conditions. *Id.*

100. A carrier which is a party to a joint rate from Buffalo to Boston on grain shipped from the west under a through rate cannot repudiate the contract of shipment, and cannot impose an arbitrary in addition to the through rate, on the ground that the grain had been milled in transit at Buffalo under an arrangement with a connecting carrier, as the carrier must apply the established rate under which the traffic moved, although it may refuse to become a party to a joint tariff which permits milling in transit. *Id.*

101. Divisions of joint rates are usually less than the corresponding locals, and almost without exception not greater; and while a case may arise in which such a division could with propriety be made greater than the local or straight rate, no such case is presented where the total through rates on competitive traffic exceed the sum of charges to and from intermediate points. *Hilton Lumber Co. v. Wilmington & Weldon R. Co.* 17.

102. The through rate on lumber from Wilmington to Philadelphia, Jersey City, and Boston via Norfolk or Portsmouth is unreasonable, and violates §§ 3, 1, and 2 of the Act to Regulate Commerce, where it is greater than the aggregate local rates on transportation of lumber under similar circumstances and conditions. *Id.*

INSTANCES.

On baking powder. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

- On blankets. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On boot and shoe heels. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On brushes. *Derr Mfg. Co. v. Pennsylvania R. Co.* 646.
- On cement. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On chocolate. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On cocoa. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On copper. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On dressed meats. *Re Proposed Advances in Freight Rates*, 382.
- On glue. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On goatskins. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On grain. *Diamond Mills v. Boston & M. R. Co.* 311.
Re Proposed Advances in Freight Rates, 382.
- On hair. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On hatters' furs. *Myer v. Cleveland, C. & St. L. R. Co.* 78.
- On hay. *National Hay Asso. v. Lake Shore & M. S. R. Co.* 264.
- On hemp. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On hides. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On honey. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On ice. *Ulric & Williams v. Lake Shore & M. S. R. Co.* 495.
- On iron. *Re Proposed Advances in Freight Rates*, 382.
- On lumber. *National Wholesale Lumber Dealers' Asso. v. Norfolk & W. R. Co.* 87.
Hilton Lumber Co. v. Wilmington & W. R. Co. 17.
Wichita v. Atchison, T. & S. F. R. Co. 569.
S. Marten v. Louisville & Nashville R. Co. 581.
- On machinery. *Red Cloud Min. Co. v. Southern P. Co.* 216.
- On mohair. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On packing-house products. *Re Proposed Advances in Freight Rates*, 382.
- On sealekins. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On sea shells. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On sheepskins. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On soap. *Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co.* 440.
- On sugar. *Wichita v. Atchison, T. & S. F. R. Co.* 606.
- On vanilla beans. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On whalebone. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On whale oil foots. *Kindel v. Atchison, T. & S. F. R. Co.* 606.
- On wheat. *Wichita v. Atchison, T. & S. F. R. Co.* 534.
- On wool. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

REDUCTION OF ESTABLISHED RATES. See SCHEDULES OR TARIFFS.

REPARATION.

Upon the amendment of a tariff so as to provide for the shipment of mixed carloads of lemons and pineapples, the complainant was allowed reparation for the excess charged above the carload rate upon the shipment in question. *Roth v. Texas & P. R. Co.* 602.

REPORT.

Of the Interstate Commerce Commission to the Senate of the United States in the matter of Rates on Import and Domestic Traffic. 650.

RICE.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

RICE, BREWERS.'

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 689.

ROPE.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

RYE.

Rates on. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

SAFETY APPLIANCE ACT.

Extension of time to comply with provisions of the act. *Re Applications of Certain Railroad Companies for an Extension of Time, etc.* 522.

SALT.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 689.

SALT CAKE.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 689.

SALTPETER.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

SAUCES.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

SCHEDULES OR TARIFFS.

Proposed general advances in freight rates, see **ADVANCES IN FREIGHT RATES.**

1. When a schedule is filed announcing an advance of general application,

for which no apparent reason exists, such action is a proper subject of investigation, and if it thereupon appears that the advance is unwarranted, the Commission should use whatever power it has to correct the injustice. *In the Matter of Proposed Advances in Freight Rates*, 382.

2. If stop-over privileges are granted for any purpose, all the facts and circumstances connected therewith should be clearly stated in the published tariff, so that the public generally may enjoy their benefits. *Mobile & O. R. Co., In Re Rates and Practices of*, 373.

3. That part of defendant's tariff regulation which provides that grain may be shipped to East St. Louis on a local rate, and forwarded as a new shipment from that point on a 12-cent proportional rate, and to Vicksburg and common points, disregards the published 15-cent local rate from St. Louis to Vicksburg. *Id.*

4. The published tariff regulation, permitting grain to be shipped through from point of origin to final destination, with a stop-over privilege in East St. Louis for cleaning, sacking, or other legitimate purposes, the shipment governing a proportional or balance of a through rate from East St. Louis, is not objectionable. *Id.*

5. In the matter of the rates for a continuous route operated by a single carrier, and the rates for a continuous route operated by more than one carrier, the law is the same with the sole exception that the Commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous line or route, while such requirement, as well as the line operated by one carrier, is specified in the law itself; but such exception does not go to the form, substance, maintenance, or application of the rates in any degree whatsoever. *Consolidated Forwarding Co. v. Southern P. Co.* 182.

6. Under § 6 of the act, two kinds or classes of routes are recognized and provided for, namely, the line of a single carrier, and a continuous line or route operated by more than one carrier, where the participating carriers establish joint rates or charges for such continuous line or route; and in respect of both classes of lines, the provision is uniform that established rates shall not be increased except after ten days' notice, nor reduced except after three days' notice. *Id.*

7. Joint through routes and rates are ordinarily the subject of agreement between the participating carriers; but when this is established, and until finally abrogated or changed, they are required by the statute to be kept open to public use. *Id.*

8. Shippers are subjected to undue, unjust, and unreasonable prejudice and disadvantage by the practice of initial carriers in a joint continuous route, of reserving to themselves exclusive control of the route, and denying to shippers any choice or control in the selection as between different established routes; as under such a practice a route or tariff may be available to one shipper, but not to another, and open one minute to a shipper, but closed the next. *Id.*

9. The Commission has prescribed, by order duly made July 23, 1899, that the several carriers operating a continuous line or route shall publish their joint rates in the same manner as separate or individual roads are required by the statute to do. *Id.*

10. Posting a notice in a station or depot that the tariff sheets of the railroad company may be found in some other place is not a compliance with the provision in the 6th section of the act requiring the posting of rate schedules or tariff in every such depot or station. *Johnson v. Chicago, St. Paul, Minneapolis & Omaha R. Co.* 221.

11. The failure of the Chicago, St. Paul, Minneapolis, & Omaha Railroad to publish through freight rates from Chicago and other points to Norfolk, Neb., while such through rates are established and published by that company in connection with other carriers to other points on its line in Nebraska, amounts to unlawful discrimination against Norfolk. *Id.*

12. The commodity tariff applying on traffic from the Middle West to the Pacific Coast territory is, to some extent, unlawful, in that it specifies a number of varied commodity rates,—especially for the hardware schedule, and unduly prevents, in some instances, the shipments of articles of the same class in mixed carloads at carload rates. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 318.

13. The commodity tariff applying on traffic from the Middle West to the Pacific Coast territory names rates upon over 400 commodities in carloads only, leaving the movement of these commodities in less than carloads to be governed by the greatly higher class rates provided for such shipments, and producing a differential as between carloads and less than carload quantities which, even under the peculiar circumstances of this traffic, is, in many cases, excessive, where there is any general movement in less than carloads, or other commercial reason for a corresponding less than carload rate. *Id.*

14. While it was shown that many differentials in the rates named for carloads and less than carloads on traffic from the Middle West to the Pacific Coast were too great, and the varied commodity rates in the hardware schedule should be readjusted, and in some instances greater latitude should be given in the shipment practically of the same articles in mixed carloads, the Commission ordered a further hearing, where the record furnished no facts from which it could be intelligently determined what ought to be done in specific instances. *Id.*

15. That part of defendant's tariff regulation, which provides that grain may be shipped to East St. Louis on a local, and forwarded as a new shipment from that point on a 12-cent proportional rate to Vicksburg and common points, seems somewhat in conflict with the doctrine announced by the Commission. *In Re Alleged Unlawful Rates and Practices in Transportation of Grain, etc., by the Atchison, T. & S. F. R. Co.* 7 I. C. C. Rep. 240.

16. The rule in defendant's classification covering the application of carload rates to carload lots should be so modified as to accord the same

rating to consignor and consignee when the condition of ownership after the property is delivered to the carrier is the same; though no opinion is expressed as to whether a carrier may distinguish between a forwarding agent and an actual owner of the goods. *Buckeye Buggy Co. v. Cleveland, C. C. & St. L. R. Co.* 620.

17. A tariff should be amended so as to provide for a mixed carload of lemons and pineapples, where it appears that the tariff provides for a mixed carload of lemons and bananas, and of pineapples and bananas, and that pineapples might be mixed in carloads with almost any other kinds of fruit except lemons and oranges. *Roth v. Texas & P. R. Co.* 602.

SEALSKINS.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

SEA SHELLS.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

SERVICE OF COMPLAINT.

While the service of a complaint upon a controlling company may not be legal service upon a subsidiary company, it does in fact, for all practical purposes, inform the other company of the proceedings. *Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co.* 534.

SHEEP DIP.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

SHEEPSKINS.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

SHEET IRON.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 330.

SILICON.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 669, 674-679, 676, 677, 678, 679.

SOAP.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.
Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co. 440.

SODA ASH.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 684, 687, 689.

SODA, BICARBONATE OF.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-670, 672-681, 685, 687, 689.

SODA, CARBONATE OF.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 671.

SODA, CAUSTIC.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-673, 675-681, 685-687, 689.

SODA, NITRATE.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 689.

SODA, SAL.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 689.

SODA, SILICATE.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 689.

SODA, SULPHATE OF.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 689.

SOIL PIPE.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 318.

SPIEGELEISEN.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668, 669, 672-681, 689.

STARCH.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 680, 681.

STONEWARE.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 687.

STOP-OVER PRIVILEGE.

On through rates. *Mobile & O. R. Co., Re Rates and Practice of*, 373.

STRAW.

Rates on. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.

SUGAR.

Rates on. *Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co.* 160.

Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co. 250.

Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co. 507.

SULPHUR, CRUDE, IN BULK.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 668-681, 689.

TERMINAL FACILITIES.

1. A common carrier is not in every case under legal compulsion to furnish the same terminal facilities for all descriptions of traffic; it is sufficient if reasonable provision is made in this regard, and what is reasonable in a given instance depends largely upon the conditions and surroundings of the particular locality. *Palmer's Dock Hay & Produce Board of Trade v. Pennsylvania R. Co.* 61.

2. The Pennsylvania Railroad Company, whose terminal in Brooklyn is connected with its railroad terminus in Jersey City, by means of water carriage across New York harbor, does not unjustly discriminate against hay in carloads by discontinuing "track delivery" for hay in carloads at its station in Brooklyn, though it continued to make such delivery for other railroad traffic, where such action was taken to relieve a state of chronic congestion at the Brooklyn station, resulting largely from consignments of hay thereto, and where it still continued to deliver carload hay alongside the wharves in Brooklyn as it does within the lighterage districts in New York. *Id.*

THROUGH RATES.

Greater than combined local rates. *Hilton Lumber Co. v. Wilmington & Weldon R. Co.* 17.

THROUGH ROUTES.

Shippers are subjected to undue, unjust, and unreasonable prejudice and disadvantage by the practice of initial carriers in a joint continuous route,

of reserving to themselves exclusive control of the route, and denying to shippers any choice or control in the selection as between different established routes, as under such a practice a route or tariff may be available to one shipper, but not to another, and open one minute to a shipper, but closed the next. *Consolidated Forwarding Co. v. Southern P. Co.* 182.

TIN PLATES.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

TOYS.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

UNJUST DISCRIMINATION. See RATES.

VANILLA BEANS.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

WAGONS.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

WATER COMPETITION.

Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co. 318.

When water competition permits the establishment of classifications and rates below the rates to non-competitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter distance points not affected by such competition. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

WHALEBONE.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

WHALE OIL FOOTS.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

WHEAT.

Rates on. *National Hay Asso. v. Lake Shore & Michigan S. R. Co.* 264.
Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co. 558.

WHISKY.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

WINE.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 685, 687.

WIRE FENCE.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

WOODENWARE.

Rates on. *Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co.* 250.

WOOL.

Rates on. *Kindel v. Atchison, T. & S. F. R. Co.* 606.

ZINC, CHLORIDE OF.

Table showing difference between import and domestic rates on shipment from various ports of entry to various places. 684, 686.

ZINC SHEET.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 323.

ZINC SLAB.

Rates on. *Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co.* 322.

